TRANSCRIPT OF RECORD

Supreme Court of the United States

[redacted]

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. GEORGE C. BETANT, PLAINTIFF IN ERROR,

vs.

CHARLES F. KIMMERMAN, CHIEF OF POLICE OF BUFFALO, NEW YORK; FRANK W. TYLER AND DEWITT BENNETT WAIT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

[redacted]

(51,666)

(31,824)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. ~~332~~ 2

THE PEOPLE OF THE STATE OF NEW YORK EX REL. GEORGE C. BRYANT, PLAINTIFF IN ERROR,

vs.

CHARLES F. ZIMMERMAN, CHIEF OF POLICE OF BUFFALO, NEW YORK; FRANK W. TYLER AND DEPUTY SHERIFF WAHL

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

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[fol. a] **IN SUPREME COURT OF NEW YORK**

RETURN TO WRIT OF ERROR

STATE OF NEW YORK,
County of Erie, ss:

I, Arthur R. Atkinson, County Clerk of the County of Erie in the State of New York, by virtue of the Writ of Error from the Supreme Court of the United States to the Honorable Justices of the Supreme Court of the State of New York in and for Erie County, New York and to the County Clerk of Erie County, New York, granted by Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, which is the highest court of the State of New York, on the 24th day of March, 1926, in the case of People of the State of New York ex rel., George C. Bryant, Relator-Appellant, also named herein as Plaintiff in Error, against Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, Defendants-Respondents, also named herein as Defendants in Error, and in obedience thereto, do hereby certify that the Appeal Book hereto attached, with its cover marked "A," containing a statement under Rule 234, an index and pages 1 to 60 inclusive, is a full, true and complete duplicate copy of the original Record used upon the hearing of said cause in said Court of Appeals and a true and complete transcript of the Remittitur of said Court of Appeals to the Supreme Court of the State of New York in and for Erie County, marked "B," containing the proceedings of said Court of Appeals in said cause of action and a true and complete transcript of the opinion of Judge Pound delivered by him on January 12th, 1926, on the rendition in the decision of the Court of Appeals of the State of New York in the above entitled action, marked "C," and a true and complete transcript of the judgment of the Supreme Court of the State of New York in and for Erie County entered in said action, marked "D," by the Supreme Court of the State of New York in and for Erie County, New York, pursuant to and [fol. b] upon said Remittitur on the 15th day of January,

1926, from the Court of Appeals of the State of New York to the Supreme Court of the State of New York in and for Erie County, as the same remain of record and on file in the Office of the Clerk of the County of Erie in the State of New York.

And I, Arthur R. Atkinson, County Clerk of the County of Erie in the State of New York, do also certify to and make return of the affidavit of Eugene E. Grass verified on the 22nd day of March, 1926, marked "E," as to the opinion of Judge Pound in the Court of Appeals of the State of New York in said case and I also do certify and make return of the petition for Writ of Error of said George C. Bryant, Relator and also designated herein as Plaintiff in Error, marked "F," and also the assignment of errors of the said George C. Bryant, Relator and also designated herein as Plaintiff in Error, marked "G," and also the original prayer of said George C. Bryant as Relator, also designated as Plaintiff in Error herein, for reversal of judgment, marked "H," and also a copy of the bond on the Writ of Error with the approval of the Chief Judge of the Court of Appeals of the State of New York endorsed thereon, marked "I," and also the order allowing the Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of New York in and for Erie County granted by Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York on March 24th, 1926, marked "J," and the original Writ of Error from the Supreme Court of the United States to the Honorable Justices of the Supreme Court of the State of New York in and for Erie County and to the County Clerk of Erie County, New York, marked "K," and also the original citation on the said Writ of Error to Defendants in Error, Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, defendants in the State Courts and also designated herein as Defendants in Error, containing their admission of service thereof, marked "L," and also a copy [fols. c & d] of the opinion of Judge Pound delivered by him on January 12th, 1926, on the rendition of the decision of the Court of Appeals of the State of New York in the above entitled action duly certified to by the attorneys for the respective parties in the above entitled action marked

"M," and also the certificate of the County Clerk of Erie County in the State of New York as to the lodgment with him as such Clerk of all the original and copies of papers transmitted herewith, marked "N," all of which are included in this return and attached hereto, and also præcipe which is hereto annexed marked "O."

In testimony whereof I have hereunto set my hand and affixed the seal of the County Clerk of the County of Erie and State of New York on the 31st day of March in the year of our Lord one thousand nine hundred and twenty-six.

A. R. Atkinson, County Clerk of Erie County, New York, by C. T. Johnson, First Dep. County Clerk.
(Seal.)

[fol. e] In Court of Appeals of New York

Witness, the Hon. Frank H. Hiscock, Chief Justice, presiding. Wm. J. Armstrong, Clerk.
Remittitur January 13th, 1926.

The People, &c., ex Rel. George W. Bryant, Appellant,

ag'st

Charles F. Zimmerman, Chief of Police of the City of Buffalo, N. Y., & Ors., &c., Respondents

Order of Affirmance—January 12, 1926

Be it remembered that on the 25th day of August, in the year of our Lord one thousand nine hundred and twenty-five, George W. Bryant, the appellant in this cause, came here unto the Court of Appeals, by Grass, Grass & Gerken, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department, And Charles F. Zimmerman, Chief of Police &c & ors. &c., the respondents in said cause, afterwards appeared in said Court of Appeals by Guy B. Moore, District Attorney, and Albert Ottinger, Attorney General.
[fol. f] Which said Notice of Appeals and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. John H. Connaughton, of counsel for the appellant, and by Mr. Guy B. Moore, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

[fols. g & h] Court of Appeals, Clerk's Office

Albany, January 13th, 1926.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. (Seal.)

[fol. i & j] In Supreme Court of New York

Statement under Rule 234

This is an appeal by the relator, George C. Bryant, from a dismissal of a Writ of Habeas Corpus. The relator was arrested on the 1st day of October, 1924, for alleged violation of Chapter 664 of the Laws of 1923. Upon the petition

of Florence E. Bryant, dated October 1, 1924, a Writ of Habeas Corpus was issued, directed to Charles F. Zimmerman, Chief of Police of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, returnable in the Supreme Court, forthwith. Arguments upon the writ was adjourned until the 6th day of October, 1924.

Notice of Appeal to the Appellate Division, Fourth Department, was filed in the Erie County Clerk's office on the 7th day of November, 1924, and copies of said Notice of Appeal were served upon the attorneys for the respective parties on the 8th day of November, 1924.

On the 22nd day of May, 1925, the Appellate Division, Fourth Department of Supreme Court, entered an order affirming the order appealed from. On the 5th day of June, 1925, Notice of Appeal to the Court of Appeals in the State of New York, was filed in the Erie County Clerk's Office and in the Appellate Division of the Supreme Court, Fourth Department, and copies of said Notice of Appeal were served upon the attorneys for the respective parties.

Since the commencement of this proceeding the Attorney General of the State of New York was made an additional party defendant by order of the Supreme Court.

[fol. 1] In Supreme Court of New York, Appellate Division, Fourth Department

Writ of Habeas Corpus and Order Allowing Same

The People of the State of New York to Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, Sheriff of Erie County; Dept. Sheriff Wahl, of Erie County:

We command you that you have the body of George W. Bryant, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said George W. Bryant is called or charged, before Justice Charles A. Pooley at a special term of the Supreme Court on the 1st day of October, 1924, forthwith that day to do and receive what shall then and there be considered concerning the said George W. Bryant, and have you then and there this writ.

Witness Hon. Charles A. Pooley, one of the Justices of [fol. 2] the Supreme Court of New York, the 1st day of October, One thousand nine hundred and twenty-four.

C. F. Johnson, Dept. Clerk. Grass, Grass & Gerken, Petitioner's Attorneys, 351-353 Ellicott Square, Buffalo, N. Y. (Seal.)

People of the State of New York ex. rel. George W. Bryant against Charles F. Zimmerman, Chief of Police of the City of Buffalo, N. Y., Frank W. Tyler, Dept. Sheriff Wahl. Writ of habeas corpus. Grass, Grass & Gerken, Petitioner's Attorneys, 351-3 Ellicott Sq., Buffalo, N. Y.

I allow the within writ this 1st day of October, 1924.

Charles A. Pooley, Justice of Supreme Court.

[fol. 3] In Supreme Court of New York

Petition

To Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, Sheriff of Erie County; Dept. Sheriff Wahl, of Erie County:

The petition of Florence E. Bryant, herein, respectfully shows:

That George W. Bryant, the person in whose behalf the writ is applied for, is now imprisoned and restrained in his liberty;

That said prisoner is now confined in the City of Buffalo, at Erie Co. Jail, in the County of Erie, New York, and the officer or officers by whom he is imprisoned and restrained are as follows:

Charles F. Zimmerman, Chief of Police of the City of Buffalo, N. Y., Frank W. Tyler, Sheriff of Erie County, Dept. Sheriff Wahl of Erie Co.

That he has not been committed, and is not detained by virtue of any judgment, decree, final order, process or mandate issued by a court or a judge of the United States, in a case where such courts or judges have exclusive jurisdiction

under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of legal proceedings in such a court; or by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction; or where the final order of such a tribunal, made in a special proceeding, instituted for any cause, except to punish him for a contempt or by virtue of an execution or other process, issued upon such a judgment, decree or final order; [fol. 4] That the cause or pretense of such imprisonment and restraint, according to the best knowledge and belief of your petitioner is that the said George W. Bryant has violated Chapter 664 of the Laws of 1923, which law is commonly known as the Walker Law, and which law is sections 53, 54, 55 and 56 of article 5-A of the Civil Rights Law.

That annexed hereto is a copy of the mandate by virtue of which said prisoner is pretended to be imprisoned and restrained.

That your petitioner alleges that said imprisonment and restraint is illegal in this, to wit:

That the Magistrate was without jurisdiction to issue the warrant, or cause his arrest, inasmuch as chapter 664 of the Laws of 1923, is unconstitutional and void and of no force or effect.

Wherefore your petitioner prays that a writ of Habeas Corpus issue, directed to Charles F. Zimmerman, Chief of Police of Buffalo, New York, Frank W. Tyler, Sheriff of Erie County, Dept. Sheriff Wahl of Erie Co., commanding him that we have the body of said George W. Bryant by him imprisoned and detained, together with the cause of such imprisonment and detention, before Hon. Charles A. Pooley at the Special Term of Supreme Court, Erie County on the 1st day of October, 1924, forthwith of that day, pursuant to the provisions of the Civil Practice Act.

Florence E. Bryant, Petitioner.

Dated at the City of Buffalo, N. Y., this 1st day of October, 1924.

[fol. 5] *Duly sworn to by Florence E. Bryant. Jurat omitted in printing.*

IN SUPREME COURT OF NEW YORK

INFORMATION

STATE OF NEW YORK,
County of Erie,
City of Buffalo, ss:

Guy B. Moore, being duly sworn, deposes and says that he is the District Attorney of Erie County.

Upon information and belief, deponent alleges that there existed in the City of Buffalo, in the County of Erie, New York, on the 22nd day of May, 1923, and for some time prior thereto, an unincorporated association which had a mem- [fol. 6] bership of more than 20 persons, and which is some times known as Buffalo Provisional Klan of the Knights of the Klu Klux Klan; that said unincorporated association continued to exist from that time until on or about the 31st day of August, 1924, and for some time thereafter; that said unincorporated association at all the times herein mentioned required an oath as a prerequisite and as a condition of membership; that at all the times herein mentioned the said unincorporated association was neither a labor union nor a benevolent order, mentioned in the Benevolent Orders Law of the State of New York; that neither said unincorporated association nor any of its officers or members, nor any one in or on behalf of said association or any of its officers or members, has ever filed with the Secretary of State of the State of New York a sworn copy of its constitution, by-laws, rules, regulations and oath of membership and a roster of its membership and a list of its officers for any current year or any of them, and at all the times herein mentioned the said unincorporated association had a constitution, by-laws, rules, regulations, oath of membership and a roster of its membership and a list of its officers for the current year; that one William C. Byrant became a member of said unincorpated association on or before the 22d day of May, 1923, and that the said William C. Bryant remained a member thereof until on or about the 31st day of August, 1924, and for some time thereafter; that the said [fol. 7] William C. Bryant, between the 22d day of May, 1923, and the said 31st day of August, 1921, attended various meetings of said unincorporated association held at the city

of Buffalo, New York; that at all the times herein mentioned the said William C. Bryant had the knowledge that said unincorporated association had failed to comply with Article 5-A of the Civil Rights Law of the State of New York, in that said unincorporated association had failed and neglected to file with the Secretary of State of the State of New York, and that the officers thereof and the members thereof, had failed to comply with said Article, which, among other things, required said unincorporated association to file with the Secretary of State of the State of New York a sworn copy of its aforesaid constitution, by-laws, rules, regulations, oath of membership and roster of its membership and a list of its officers for the current year or any of them; and that on or about the 26th day of August, 1924, the said William C. Bryant wilfully and wrongfully committed the crime of violating Section 56 of Article 5-A of the Civil Rights Law of the State of New York, in that on or about said 26th day of August, 1924, said William C. Bryant did attend a meeting of the aforesaid unincorporated association with knowledge that the aforesaid law had not been complied with in any respect; and that the said William C. Bryant on or about said day remained a member of said unincorporated association with a knowledge that said unincorporated association had failed to comply with the provisions of the aforesaid law in any respect and that said [fol. 8] meeting so attended by William C. Bryant was held in the City of Buffalo, New York, on or about said day.

That the source of deponent's knowledge and the grounds for his belief as to the allegations herein contained are conversations had with the said George C. Bryant, one Carl Sturm, and one Austin C. Roche; that the said Bryant stated to deponent that he was a member of the association as heretofore set forth, and that he had attended meetings of the same as hereinbefore set forth, and admitted that said association had not filed anything whatever with the Secretary of State of the State of New York; that the said Carl Sturm stated to deponent that the said association had various meetings, one of which was on about the 26th day of August, 1924; and by the said Roche deponent was told that said association had a membership of more than twenty members.

Wherefore deponent prays that legal process may be issued and that the said George C. Bryant be apprehended and held to answer the complaint herein contained and be dealt with according to law.

(Sgd.) Guy B. Moore.

Subscribed and sworn to before me this 30th day of September, 1924. J. Adam Weiss.

[fol. 9] In Supreme Court of New York

Warrant

Return Warrant for Violation Section 56, Article 5-A, of Civil Rights Law

Erie County,
City of Buffalo, ss:

In the name of the People of the State of New York, to any Sheriff, Constable or Policeman of the City of Buffalo, County of Erie:

Information upon oath having been this day laid before me that the crime of Violation Section 56, Article 5-A of the Civil Rights Law has been committed and accusing George C. Bryant, defendant thereof; you are therefore commanded forthwith to arrest the above named defendant and bring him before me, at City Court of Buffalo, or in my absence or inability to act, before the nearest or most accessible magistrate in this City and County.

(Signed) George W. Woltz, Judge of the City Court of Buffalo.

Dated at the City of Buffalo, County of Erie, this 30th day of September 1924.

[fol. 10] In Supreme Court of New York

[Title omitted]

Order Permitting Attorney General to Intervene—October 24, 1924

Upon reading and filing the affidavit of Edward G. Griffin, verified the 23rd day of October, 1924, it is hereby ordered that Carl Sherman, as Attorney-General of the State of New York is hereby allowed to intervene and is made an additional party defendant.

Chas. A. Pooley, Justice of the Supreme Court.

[fol. 11] In Supreme Court of New York

[Title omitted]

Affidavit of Edward G. Griffin

State of New York,
City and County of Albany, ss:

Edward G. Griffin, being duly sworn deposes and says: I am a Deputy Attorney-General of the State of New York, duly qualified and acting as such and have been during all the times hereinafter mentioned. The Relator, in the above entitled proceeding, challenges the constitutionality of Article 5-a, Sections 53-56 of the Civil Rights Law as added by laws of 1923, Chapter 664. The Attorney-General is consequently interested, and pursuant to Section 68 of the Executive Law, as added in 1913, hereby respectfully applies to this honorable Court for leave to intervene.

Edward G. Griffin.

Sworn to before me this 23rd day of October, 1924.
Albert J. Danaher, Notary Public.

[fol. 12] In Supreme Court of New York

[Title omitted]

Order Dismissing Writ of Habeas Corpus—October 6, 1924

On reading and filing the petition of Florence E. Bryant herein, dated and verified October 1, 1924, the Writ of Habeas Corpus herein, dated and allowed the 1st day of October, 1924, the affidavit of Guy B. Moore, subscribed and sworn to on the 30th day of September, 1924, the warrant issued out of the City Court of Buffalo for the arrest of the relator, George W. Bryant, dated the 30th day of September, [fol. 13] 1924, and after hearing Louis E. Fuller, Esq., of counsel for relator, in support of said Writ of Habeas Corpus, and Guy B. Moore, Esq., District Attorney of Erie County, Carl Sherman, Esq., Attorney General of the State of New York, and Henry W. Killeen, Esq., in opposition thereto.

Now, on motion of Guy B. Moore, District Attorney of Erie County, it is ordered that said Writ of Habeas Corpus, bearing date October 1, 1924, be and the same hereby is dismissed.

Chas. A. Pooley,

Granted Nov. 7th, 1924. F. W. Raur, Sp. Dep. Clerk.

[fol. 14] In Supreme Court of New York

[Title omitted]

Notice of Appeal

Sirs: You will please take notice that George W. Bryant hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Fourth Department, from an order made in the above entitled matter at a special term of the Supreme Court, held at the City and County Hall, in the City of Buffalo, County of Erie, State of New York, on the 6th day of October 1924, and filed in the office of the County Clerk of Erie County, on the 8th day of November 1924, dismissing the Writ of Habeas Corpus issued herein, which writ was allowed on the first day of October 1924.

[fol. 15] You will also please take notice that the Appellant appeals from the said order and from each and every part thereof.

Grass, Grass & Gerken, Attorneys for Relator.

Office & P. O. Address: 351-3 Ellicott Square, Buffalo, N. Y.

Dated November 8th, 1924.

To Guy B. Moore, District Attorney, Erie County, New York.

To Carl W. Sherman, Attorney General of the State of New York.

To Arthur R. Atkinson, County Clerk, Erie Co., N. Y.

Sirs: Please take notice that a Notice of Appeal, of which the within is a copy, was duly filed on the 8th day of November 1924, in the Office of the County Clerk of Erie County.

Grass, Grass & Gerken, Attorneys for the Relator.

Office & P. O. Address: 351-3 Ellicott Square, Buffalo, N. Y.

Dated November 8th, 1924.

[fol. 16] To Guy B. Moore, District Attorney, Erie County, New York.

To Carl W. Sherman, Attorney General of the State of New York.

To Arthur R. Atkinson, County Clerk, Erie Co.

In Supreme Court of New York

[Title omitted]

Messrs. Grass, Grass & Gerken, for Relator. Louis E. Fuller, Esq., of Counsel.

Guy B. Moore, Esq., District Attorney, for Respondent.

Hon. Carl Sherman, Attorney General, for the Statute.

Henry W. Killeen, Esq., as amicus curie.

[fol. 17] Opinion

Pooley, J.:

The relator has been arrested on the charge of violation of the Civil Rights Law, Article V-A, sections 53 to 56, inclusive, passed in 1923, effective May 23, 1923, and comes

into Court pursuant to a writ of habeas corpus, claiming that the law is unconstitutional, and that he should therefore be discharged.

The sections in question read as follows:

"§ 53. Copies of Documents and Statements to be Filed.—Every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders law, within thirty days after this article takes effect, and every such corporation or association hereafter organized, within ten days after the adoption thereof, shall file with the secretary of state a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year.

* * * * * * *

"§ 54. Resolutions Concerning Political Matters.—Every such corporation or association shall, within ten days after the adoption thereof, file in the office of the secretary of [fol. 18] state every resolution, or the minutes of any action of such corporation or association, providing for concerted action of its members or of a part thereof to promote or defeat legislation, federal, state or municipal, or to support or to defeat any candidate for political office.

"§ 55. Anonymous Communications Prohibited.—It shall be unlawful for any such corporation or association to send, deliver, mail or transmit to any person in this state who is not a member of such corporation or association any anonymous letter, document, leaflet or other written or printed matter, and all such letters, documents, leaflets, or other written or printed matter, intended for a person not a member of such corporation or association, shall bear on the same the name of such corporation or association and the names of the officers thereof together with the addresses of the latter.

"§ 56. Offenses; Penalties.— * * *"

This legislation is apparently aimed at the organization known as the Ku Klux Klan, although it is not specifically named. All the briefs submitted, as well as the oral argu

ments, assume the applicability, and the Court may indulge in the assumption.

The proceeding by habeas corpus is one of several proper methods to test the rights of the relator, but under it we [fol. 19] are confined to the statute itself, regardless of extraneous facts, and solely as regards the relator himself.

Engel v. O'Malley, 219 U. S. 128.

The statute is assailed on the ground that it is class legislation, wrongfully restricting the personal liberty of certain citizens, in an unreasonable and arbitrary manner.

It cannot be questioned that the legislature has the power to enact laws applicable to particular classes, under the police power of the State, having regard to the public safety, the protection of public morals, and general welfare of the people.

The Court starts with the presumption that the statute is valid, the deliberate enactment of the law making power, and that it is to determine whether or not the act is unreasonable and arbitrary.

It may be assumed that the legislature informed itself of conditions bearing upon the proposed legislation. These conditions probably are not such as would enable the Court to take judicial notice of them, but the legislature could well have learned of the acts of the Klan. It is a matter of common knowledge that this organization functions largely at night, its members disguised by hoods and gowns and doing things calculated to strike terror into the minds of [fol. 20] the people. It is claimed that they are organized against certain of the citizens by reason of race or religion. This, of course, cannot be tolerated under our form of government. If what is claimed of it is true, it strikes at fundamental principles of our government, principles that have been recognized as the foundation of our liberties. If they are true, the State has the power to eradicate them and is not required to await active violations before enacting legislation. It may anticipate them. If it is not true, the members should be the first to make it manifest. The organization is the same in name as, or similar to, that of an organization following the Civil War, and it appears to have adopted many of the details of regalia and procedure. It is unfortunate, as I view it, in adopting the name of an organiza-

tion which was disposed of by proclamations of the President and was prosecuted in the courts. A culmination was reached by the enactment, in 1871, of Chapter 22, U. S. Statutes at Large 17, which came to be known as the Federal Ku Klux Law, forbidding disguises and interference with freedmen's rights. This enactment was challenged in U. S. vs. Harris, 106 U. S. 629, but not upon the ground that it transcended the inherent power of government.

The State is bonded to maintain order within its boundaries, promote the general welfare, protect its citizens in their personal and property rights. In doing so, the legislature has been called upon frequently to enact what has [fol. 21] been denominated class legislation, and has been upheld by the courts.

"The police power so called inheres in every sovereignty, and is essential to the maintenance of public order and the preservation of mutual rights from the disturbing conflicts which would arise, in the absence of any controlling, regulating authority, and has been constantly exercised by the Legislature in a great variety of cases."

Bertholf v. O'Reilly, 74 N. Y. 522.

A few references may be made, notably, The Slaughter House cases, 16 Wall, 36, and Munn v. State of Illinois, 4 Otto, 114, which Andrews, J., in Bertholf case, supra, says "may be deemed to have carried the right of legislative interference with private rights and property, to its utmost limit, but they illustrate the scope of the police power in legislation." The adulteration of milk, Peo. vs. West, 106 N. Y. 293. The restriction of hours of labor, Peo. vs. Klinck Packing Co., 214 N. Y. 121. The Agricultural Law, restricting the handling of milk or cream for shipment to any city, as a business, without having an office within the state and a license, Peo. v. Beakes Dairy Co., 222 N. Y. 416. In this last case the Court says:

"Whatever might be said of the statute as class legislation is answered by Peo. vs. Havnor, 149 N. Y. 195. The statute there under consideration placed barbers in a class by themselves and then subdivided the class between barbers [fol. 22] in New York and Saratoga and barbers elsewhere for the purpose of regulating their right to work on Sunday;

but Vann, J., said 'the statute treats all barbers alike within the same localities. * * *' There is no constitutional prohibition against class legislation as such, if the classification is based on some reasonable ground and is not essentially arbitrary."

Coming, then, to the question whether or not the legislation is unreasonable, arbitrary and discriminatory, it is urged that the act exempts all labor organizations and the twenty six benevolent orders mentioned in the Benevolent Orders Law. These organizations and their purposes are well known, many of them having been in existence for many years. Many of them are oath-bound and secret. But we hear of no complaints against them regarding violation of the peace or interfering with the rights of others. If it should appear that any one of them or any group of them was violating the law, they might be promptly and effectively proceeded against.

As is well said in Miller vs. Wilson, 236 U. S. 373:

"It is a well-established principle that the legislature is not bound, in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. Patsone v. Pennsyl- [fol. 23] vania, 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all embracing terms.' Carroll v. Greenwich Insurance Co., 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied."

Some features of the statute are criticised in the able brief of counsel for the relator, but in my view it is unnecessary to further extend the discussion. The statute does not invade the rights of this relator, and the motion to dismiss the suit should be denied.

[fol. 24] In Supreme Court of New York

[Title omitted]

Stipulation re Transcript of Record

Pursuant to Section 170, of the Civil Practice Act it is hereby stipulated that the foregoing are true copies of the Writ of Habeas Corpus, Return, Order Dismissing Writ of Habeas Corpus, Notice of Appeal, Opinion Submitted by the Lower Court in deciding the Writ, and Affidavit and Order permitting Attorney General to Intervene, constituting the full record, and certification thereof by the Clerk of the Court is hereby waived.

Grass, Grass & Gerken, Attorneys for Relator. Guy B. Moore, Attorney for the People. Carl W. Sherman, Attorney-General, State of New York.

Dated December —, 1924.

[fol. 25] In Supreme Court of New York, Appellate Division

[Title omitted]

Order of Affirmance—May 22, 1925

The above named George W. Bryant, relator in this proceeding, having appealed to the Appellate Division of the Supreme Court, Fourth Department, from an order of the Supreme Court, entered in the office of the Clerk of the County of Erie, on the 7th day of November, 1924, and the said appeal having been argued by Mr. Louis E. Fuller, of [fol. 26] counsel for the appellant, and by Mr. Guy B. Moore, Mr. John H. Clogston and Mr. John H. Connaughton, of counsel for the respondents, and due deliberation having been had thereon,

It is hereby ordered, that the order so appealed from be, and the same hereby is, affirmed.

Opinion by Clark, J., and opinion by Sears, J.

All concur, except Davis, J., who dissents in an opinion.

Enter.

Irving G. Hubbs.

Entered 22d day of May, 1925.

Herbert E. Wait, Clerk.

Supreme Court Appellate Division, Fourth Judicial Department

Clerk's Office, Rochester, N. Y.

I, Herbert E. Wait, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that the within is a true copy of the original order made by said court upon the appeal in the within entitled action or proceedings, and of the whole thereof, and that the original case and papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New [fol. 27] York, this 22d day of May, 1925.

Herbert E. Wait, Clerk. (Seal.)

In Supreme Court of New York, Appellate Division, Fourth Department

[Title omitted]

Argued March 24, 1925; Decided May 22, 1925

Present: Hon. Irving G. Hubbs, Presiding Justice; Hon. William W. Clark, Hon. Rowland L. Davis, Hon. Charles B. Sears, Hon. Harry L. Taylor, Associate Justices.

Appeal from Order Granted at the Erie Special Term, November 7th, 1924, Dismissing a Writ of Habeas Corpus

[fol. 28] Guy B. Moore, District Attorney, Buffalo, N. Y., for the People.

Albert Ottinger, Attorney General, Albany, N. Y. (John H. Clogston, Deputy Attorney General), for the People.

Grass, Grass & Gerken, Buffalo, N. Y. (Louis E. Fuller and W. F. Zumbrunnn, of Counsel), for the Relator.

OPINION

CLARK, J.:

The relator was arrested upon a warrant issued out of the City Court of Buffalo, charged with the violation of Section 56 of Article 5-A of the Civil Rights Law. (Laws of 1923, Chap. 664).

The information upon which the warrant of arrest was issued charges that relator attended a meeting of, and remained a member of an association known as Buffalo Provisional Klan of the Knights of the Ku Klux Klan with knowledge that said association had not complied with the provisions of Section 53 of Article 5-A of the Civil Rights Law, in that said association had failed and neglected to file with the Secretary of State a sworn copy of its by-laws, rules, regulations, oath of membership, a roster of its membership, and a list of its officers for the current year, and that said association is an unincorporated association, having a membership of more than twenty persons, which requires an oath as a prerequisite and as a condition of membership; and that said association is not a labor union nor a benevolent order mentioned in the Benevolent Orders [fol. 29] Law of the State of New York, which are specifically excepted from the operation of the statute, the benevolent orders mentioned in the Benevolent Orders Law being recognized and approved by the terms of that statute (Laws of 1909, Chap. 11).

The facts are not in dispute. Relator sued out a writ of habeas corpus upon the theory that the statute in question is unconstitutional and that is the only question to be determined. From an order dismissing the writ this appeal is taken.

Relator contends that the statute in question is unconstitutional for the reason that it is class legislation and wrongfully restricts the personal liberty of certain citizens and that it compels certain corporations and associations and the officers thereof to furnish evidence against themselves which might be used in a criminal prosecution against them.

Section 53 of the statute under consideration provides that corporations and unincorporated associations therein referred to shall file with the Secretary of State certain documents pointed out in the statute, and Section 56 pro-

vides certain penalties for failure to do so. If such documents are filed and the required information is furnished there is no penalty and the filing would not be furnishing evidence against the corporations, associations, or persons so filing in violation of Section 6 of Article One of the State [fol. 30] Constitution. Complying with the terms of the statute would preclude a criminal prosecution under it instead of creating a situation where the information furnished under the statute might be used in a criminal prosecution against the parties furnishing it.

The Civil Rights Law as amended by Chap. 664 of the Laws of 1923, consists of four sections, numbers 53, 54, 55 and 56. The information upon which the warrant was issued does not allege any facts showing a violation of sections 54 or 55 of said statute, but rests exclusively upon that part of section 56 which makes it a misdemeanor to remain a member of, or attend a meeting of such an association with knowledge that it had failed to comply with the provisions of section 53 of said Article 5-A of the Civil Rights Law.

Section 54 of said Act (Laws of 1923, Chap. 664) has reference to resolutions concerning political matters and section 55 has reference to anonymous communications which are prohibited.

The relator is not charged with violating either of these two sections, and a reading of the Act will show that they have no relation whatever to a violation of section 53 of said Act.

It will, therefore, not be necessary to consider the sections not involved in the charge against relator, for the offences pointed out in section 53, 54 and 55 are not so related to each [fol. 31] other that they cannot be considered separately. That is, the sections of the statute are independent of each other, and if the sections that relator is charged with violating are constitutional and valid they may be enforced (Connolly vs. Union Sewer Pipe Co., 184 U. S. 540) and the other sections may be disregarded in the discussion.

Relator complains that the exemption in said statute of labor unions and the benevolent orders mentioned in the Benevolent Orders Law is an unlawful classification in violation of Sec. 6 of Article I, of the Constitution of the State of New York, which provides among other things that no person shall be deprived of life, liberty or property

without due process of law, and of Sec. 1 of the 14th Amendment of the Federal Constitution, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and that no state shall deprive any citizen of life, liberty, or property, without due process of law, and that no state shall deny to any person within its jurisdiction the equal protection of the law.

Relator also complains that the act which he is charged with violating is unconstitutional because it limits the application of its provisions to associations of twenty or more persons, because as it is claimed it is an unlawful discrimination and classification in violation of the aforesaid provisions of the constitution.

In People vs. Beakes Dairy Co., 222 N. Y., at page 429, it is said:

[fol. 32] "There is no constitutional prohibition against class legislation as such if the classification is based on some reasonable ground and is not essentially arbitrary."

Under the police power of the state the legislature has the authority to enact laws applicable to particular classes having regard to the public safety and the general welfare of the people.

Berthoff vs. O'Reilly, 74 N. Y., at page 522, Judge Andrews writing for the court in that case said:

"The police power so called inheres in every sovereignty, and is essential to the maintenance of public order and the preservation of mutual rights from the disturbing conflicts which would arise in the absence of any controlling, regulating authority, and has been constantly exercised by the legislature in a great variety of cases."

Presumably the legislature had information of conditions which in its judgment justifies the legislation here attacked as unconstitutional.

Matter of Stubbe vs. Adamson, 220 N. Y. 469.

It is a matter of common knowledge that the association or organization of which relator is concededly a member exercises activities tending to the prejudice and intimidation of sundry classes of our citizens. But the legislation is [fol. 33] not confined to this society. It meets a general

evil all too liable to result from the organization of such associations.

The legislature and the courts may well take notice of matters and tendencies generally recognized among the people.

Fuller vs. Oregon, 208 U. S. 412.
Brown vs. Piper, 91 U. S. 37

In People vs. Beakes Dairy Co., supra, at page 428 the Court of Appeals says:

"If the legislature can check impending ills before they become notorious, the court should not say that it has acted too soon."

The legislature has plenary power, not only to maintain order within the boundaries of the state, but also to protect itself from seditious propaganda and its citizens from malicious discrimination and wanton intimidation. The prevention and repression of such evils is well within the legislative power and classification (provided it is not palpably arbitrary) may be resorted to in carrying out the legislative will. This is established by a long line of authorities.

People vs. Beakes Dairy Co., supra.
People vs. Klinck Packing Co., 214 N. Y. 121.
People vs. West, 106 N. Y. 293
People vs. Charles Schweinler Press, 214 N. Y. 395.
Patsone vs. Pennsylvania, 232 U. S. 144.

[fol. 34] In the case of People vs. Klinck Packing Co., supra, the constitutionality of a provision of the Labor Law to the effect that every employer shall allow every employee twenty-four consecutive hours of rest in every seven consecutive days was under consideration. The statute exempted from its provisions employees of dairies, creameries, etc., numbering seven or less, and it was claimed that this was an unreasonable and arbitrary classification. The Court of Appeals in holding otherwise said at page 136:

"The provision exempting employees of dairies, creameries, etc., numbering seven or less, seems to me to be based upon a perfectly reasonable classification and, therefore, within the legislative power."

In People vs. Beakes Dairy Co., 222 N. Y. 416, the Agricultural Law restricting handling of milk or cream for shipment to any city as a business by an individual or corporation, without having an office within the state and a license, was attacked, and the Court in upholding the law, said among other things:

"Whatever might be said of the statute as class legislation * * * is answered by People vs. Hanover, (149 N. Y. 195). The statute there under consideration placed barbers in a class by themselves, and then subdivided the class between barbers in New York and Saratoga and barbers elsewhere for the purpose of regulating their right to work on Sunday. Judge Vann writing said: 'She statute [fol. 35] treats all barbers alike within the same locality * * *.'

"There is no constitutional prohibition against class legislation as such if the classification is based on some reasonable ground, and it is not essentially arbitrary."

It is presumed that a legislative enactment is valid.

People vs. West, 106 N. Y. at page 295.

The People ex rel Simon vs. Bradley, 207 N. Y. 392 610.

The People ex rel. Metropolitan St. Ry. Co. vs. Tax Commissioners, 174 N. Y. at page 437.

People ex rel. Kemmler vs. Durston, 119 N. Y. 569. 577.

Stubbe vs. Adamson, 220 N. Y. 469.

In Radice vs. The State of New York, 264 U. S. 292, the Court had under consideration at statute of this state which provided that:

"In cities of the first class no female over the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any restaurant more than six days or fifty-four hours in any one week, or more than nine hours in any one day, or before six o'clock in the morning or after ten o'clock in the evening of that day."

It also provided that the statute should:

"Not apply to females employed in restaurants as singers [fol. 36] and performers of any kind, or as attendants in

ladies' cloak rooms and parlors, or to females employed in or in connection with the dining rooms and kitchens of hotels, or in connection with lunch rooms or restaurants conducted by employers solely for the benefit of their own employees."

The statute, (Chap. 535, Laws 1917) was attacked on the ground that it controverted the provisions of the Fourteenth Amendment of the Federal Constitution in that it deprived the employer and employees of their liberty of contract, and that it deprived them of the equal protection of the laws by an unreasonable and arbitrary classification.

The Supreme Court held that the determination of the legislature that night work for women was detrimental to the health and welfare of women engaged in it justified its suppression, and the Court also held that the statute did not deny to women the equal protection of the law because it discriminated between cities of the first and second class and did not apply to women employed in restaurants as singers and performers and to those employed in dining rooms and kitchens of hotels because it created an arbitrary and unreasonable classification.

Also see

Packard vs. Banton, 264 U. S. 140.
Hayes vs. Missouri, 120 U. S. 68.
Miller vs. Wilson, 236 U. S. 373.

[fol. 37] In the last case the Court was considering the constitutionality of a California statute prohibiting the employment of women in certain lines of business, including hotels, and it was held that the statute was not unconstitutional as to women employed in hotels as an unwarranted invasion of liberty of contract, or as denying the equal protection of the law on the ground of unreasonable discrimination or improper classification, the Court saying:

"The legislature is free to recognize degrees of harm and may confine its restrictions to those classes where it deems the need is the greatest and if the law hits an evil where it is most felt, the prohibition need not be all embracing."

In Kockee Coke Co. vs. Taylor, 234 U. S. 227, the Court said:

"It is more pressed that the act discriminates unconstitutionally against certain classes. But while there are differences of opinion as to the degree and kind of discrimination permitted by the Fourteenth Amendment, it is established by repeated decisions that a statute aimed at what is deemed an evil and hitting it presumably where experience shows it to be most felt is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well. That is for the legislature to judge unless the case is very clear."

[fol. 38] It may be presumed that the legislature deemed the activities of societies with an oath-bound membership liable to be detrimental to the public welfare, and in exercising its police powers in an endeavor to restrain them it was well within its powers and "for the courts to attempt to determine whether the exercise of police power within legislative limits is wise would be contrary to our constitutional system and substitutes judicial opinion for the legislative will."

Purity Extract Co. vs. Lynch, 226 U. S. 193.

If the purposes of an oath bound organization are worthy ones, there can be no good reason why it should hesitate to comply with this statute, for the fullest publicity can in no way injure or prejudice right endeavor. If on the other hand its purposes are seditious, insidiously subversive of our institutions, maliciously discriminative, intimatory, or criminal, then it should be regulated and restricted before great mischief has been done.

The statute in question was constitutional as a police regulation for the general welfare and safety of the people of the state.

The order appealed from should be affirmed.

All concur, Sears, J., in separate opinion, excepting Davis, who dissents in an opinion.

[fol. 39] In Supreme Court of New York, Appellate Division, Fourth Department

[Title omitted]

Separate Opinion

Sears, J. (concurring):

The sole question involved in this appeal is the constitutionality of certain sections of the Civil Rights Law, particularly sections 53 and 56, the significant provisions of which are as follows:

"Sec. 53. Every existing membership corporation and every existing unincorporated association having a membership of twenty or more persons, which corporation or association which requires an oath as a pre-requisite for admission to membership, other than a labor organization, or a benevolent order mentioned in the Benevolent Order Law, within thirty days after this article takes effect, and every such corporation or association hereafter organized [fol. 40] within ten days after the adoption thereof, shall file with the secretary of state a sworn copy of its constitution, by-laws, rules, regulations and oath of membership together with a roster of its membership and a list of its officers for the current year. * * *."

"Sec. 56. Any corporation or association violating any provision of this article shall be guilty of a misdemeanor * * *. Any officer of such corporation or association and every member of a board of directors, trustees or other similar body who violates any provision of this article, or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. Any person who becomes a member of any such corporation or association or remains a member thereof or attends a meeting thereof with knowledge that such corporation or association has failed to comply with the provisions of this article shall be guilty of a misdemeanor."

Obviously the justification for this enactment must be sought in that broad field of legislative authority inherent in sovereignty to provide for the life, safety, health, morals

and welfare of society, generally called the "police power." Statutes adopted for such purposes usually infringe to a greater or less extent upon the liberty and property of individuals, but the guaranties of the Federal and State constitutions in respect to liberty and property (Federal Constitution, XIV Amendment; New York State Constitution, [fol. 41] Article I, Sec. 6) are not absolute but reach their limit when the general welfare runs counter to their assertion (Health v. Rector &c., 145 N. Y. 32; Bertholf v. O'Reilly, 74 N. Y. 509). The line is frequently difficult to draw between the valid exercise of the police power and the unconstitutional deprivation of liberty and property (People v. Williams, 189 N. Y. 131; People v. Charles Schweinler Press, 214 N. Y. 395; Wright v. Hart, 182 N. Y. 983; Klein v. Maraveles, 219 N. Y. 383). We start in every case, however, with the presumption in favor of the constitutionality of the statute. The legislature is endowed with wide discretionary powers to determine both whether evil threatens the general welfare and what means should be adopted to defeat it. The determination of these matters is generally legislative and not judicial. "It is a sufficient basis for legislative action if only there are reasonable grounds for belief that the evil may occur, and even though there be 'an earnest conflict of serious opinion on the subject.'" Judicial interference with the execution of the statute is, therefore, unwarranted unless it appears that no evil can with reason be thought to exist or to be apt to come into existence, or that the means adopted cannot with reason be considered adapted to remedy or prevent the evil or unless the remedy is unduly oppressive or confiscatory.

(Matter of Stubbe v. Adamson, 220 N. Y. 469; People ex rel Durham Corporation v. La Lettra, 230 N. Y. 429.)

[fol. 42] Applying these principles to the present case, we must determine whether there is an evil actually present or reasonably to be anticipated, in the existence of associations, incorporated or unincorporated, having an oath-bound membership. Although there was no legislative commission to investigate the subject before the passage of the act, yet we must assume that the legislature did investigate and took

into consideration in the enactment all matters of general or widespread notoriety and belief.

(Matter of Stubbe v. Adamson, supra; Safee v. City of Buffalo, 204 App. Div. 561.)

The opportunity for such associations inimical to the public welfare is always present. At other times and in other countries, crime and disorder have without doubt been fostered by oath-bound societies. Witness the Camorra; the Mafia, the Boxers. Still other societies of a somewhat similar character have existed for political purposes, such as the Carbonari, the Nihilists, the Fenians, and the Tugendbund—and even for judicial purposes as in the case of the Fehmic Courts. In our own country in the late 60's and the early 70's of the last century, the well known activities of the former Knights of the Ku Klux Klan and the Knights of the White Camelia, and of like organizations, exercised a very considerable extra-legal authority, often, if we can believe the reports, by the use of intimidation and terrorism. At about the same time the disorders of the Molly Maguires [fol. 43] occurred in the West (Cf. C. W. Heckethorn's Secret Societies of all Ages and Countries 2d Ed. London 1897). We already have on our statute books other penal laws against assemblies for purposes subversive of the principles of our government (Penal Law Sec. 162). The reputed activities at the present time of one such society are generally believed to be a cause for fear with many people. At least one other State has deemed legislation on the subject similar to that involved here to be necessary (Acts of Louisiana Chapter 2 of the Laws of 1924). The fundamental peril from such bodies rests in their secrecy and anonymity. If their purposes were known, if their members were subject to recognition, they would promptly become harmless and generally disappear. The legislature in the present act, therefore, has adopted a remedy which has a direct relation to an evil which may reasonably be thought to exist or threaten (Safee v. City of Buffalo, supra; Samuels v. McCurdy, — U. S., —; 69 L. Ed., 371). These mild regulatory terms of the statute are far from oppressive or confiscatory. The penal provisions quoted above are well adapted to enforce compliance.

The more serious criticism of the statute by the appellant is upon the theory that by reason of the exceptions specified in the act, the relator who attended a meeting of the Ku Klux Klan with knowledge that that association, although subject to the provisions of this act, had not complied therewith, was denied the equal protection of the law (Federal [fol. 44] Const., XIV Amendment; New York State Const., Art. I, Sec. 1). The constitutional guaranties invoked do not forbid classification. It is only when classification becomes unreasonable and palpably arbitrary that it offends the constitution (Radice v. State, 264 U. S. 292; Adkins v. Children's Hospital, 261 U. S. 525; People v. Klinck Packing Co., 214 N. Y. 121; Connolly v. Union &c., 184 U. S. 540). The appellant in his argument here calls attention to the provision (a) that societies of less than twenty members are not affected by the statute, and (b) that labor unions and benevolent orders mentioned in the Benevolent Orders Law are excepted from its operation. College fraternities and sororities have also been excepted by an amendment just enacted (Laws 1925, Chap. 251). I cannot find that any one of these exceptions is necessarily arbitrary. It is easy to see a reasonable basis for each. Unless such a society has twenty members, its activities might be thought too insignificant, its influence too negligible to require regulation. Classification based on numbers is not necessarily unreasonable or arbitrary (People v. Klinck Packing Co., supra; Matter of Europe, 231 N. Y. 105). Labor unions have a recognized lawful purpose. The benevolent orders mentioned in the Benevolent Orders Law have already received legislative scrutiny and been granted special privileges so that the legislature may well consider them beneficient rather than harmful agencies. College societies are known to be social and scholatic and may well be deemed innocuous and unimportant in the general life of the community. The Legislature has determined that [fol. 45] all these excepted bodies of which the purposes are known, are innocent or at least not harmful in the same way as are those subject to the regulation. I cannot say that it was wrong in this.

It is also urged that the statute requires the members of the society to give evidence against themselves, and, therefore, violates both the Federal and State constitutions. This is patently untenable. Upon filing the information,

the existence of the society becomes lawful. It is a mere pre-requisite to the carrying on of its functions, not a disclosure of crime or of any element of wrong doing. Somewhat similar provisions occur in the regulation of certain business enterprises. A person doing business under an assumed name, must file a declaration in the County Clerk's office. (Penal Law, Sec. 440.) Every publisher of a newspaper, magazine or other periodical must print the full name and address of the owner in every issue. (General Business Law, Sec. 330). Insurance and real estate brokers must register and take out licenses. (Real Property Law, Sec. 440 a; Insurance Law, Sec. 142; Hauser v. North British & Mer. Ins. Co., 206 N. Y. 455.) None of these statutes has been attacked as compelling self-incrimination, although the validity of the last mentioned act has been challenged as an unlawful exercise of the police power, and its validity sustained at the Special Term. (Goretzinger v. Forest Corp., 123 Misc. 274.)

This appeal does not require a consideration of Secs. 54 and 55 of the Civil Rights Law. If those sections contain any provision in conflict with our constitutions, such pro- [fol. 46] visions would not affect the validity of Sections 53 and 56. They are not so closely bound together as to be incapable of separation. (Connolly v. Union, &c., supra; Buffalo Gravel Corp. v. Moore, 201 App. Div. 242, affd., 234 N. Y. 542.)

The propriety of this legislation and its necessity are not open to judicial consideration.

I find that the legislature in enacting the statute did not transcend the limits of its power.

The order should be affirmed with costs.

In Supreme Court of New York, Appellate Division, Fourth Department

[Title omitted]

Dissenting Opinion

Davis, J. (dissenting):

There can be no doubt that the legislature in enacting statutes to promote public health, safety and welfare, may [fol. 47] make reasonable classifications and exceptions.

The wisdom of such legislation will not ordinarily concern the courts in passing on the question of its constitutionality. These principles have been so often recognized and stated in judicial opinions as to render further discussion unnecessary. We may say also that in general a requirement to file documents in public offices does not invade the constitutional right that a man shall not be compelled to furnish evidence that he has been guilty of a crime.

We have here no question of regulating business or occupations in the interest of public health or welfare, so authorities dealing with those subjects are not pertinent. The question now presented goes deeper. It involves the right of the legislature to enact oppressive and confiscatory laws, by which citizens may be denied a common right, and be subjected to unreasonable restraint and annoyance and become liable to criminal prosecution for acts long regarded harmless and innocent, where there is no manifest relation between the statute and public health, safety or welfare. In such case the purpose of the statute must be clear, and the reason for it must depend upon something more tangible than surmise and conjecture.

The police power residing in legislative bodies is broad and far-reaching and it is with difficulty that it may be defined or its bounds definitely fixed. But it has its limitations and it may not trench too far on the general welfare and rights of citizens or on the blessings of liberty secured [fol. 48] to us and our posterity by the constitution; nor unnecessarily abridge the privileges and immunities we enjoy; nor deprive us of liberty or property, without due process of law. It must be conceded that there are some human relations free from legislative restrictions, and some acts so innocent that they may not be made criminal by legislative fiat.

The test then must be whether the legislation is reasonable, according to common experience and judgment. If it does not meet that test, it is void. For not only is legislation which contravenes the express commands of the constitution void, but legislation is likewise void which contravenes what the constitution necessarily implies. (Matter of Hopper v. Britt, 203 N. Y. 144).

The constitution cannot protect us from our own follies whether individual or collective, but it may at times protect us from the follies of the representatives we select

when written into arbitrary, oppressive and confiscatory legislation. If this were not so, the constitution would have no practical value, and the laws under which we live would at times represent only the caprice, the anger and the unreasonable judgment of the majority.

The right of men to organize societies and clubs often denied by despotic governments as hostile to the state or established religion, has always been recognized here. In fact, it is more ancient that the government itself. There were voluntary patriotic societies, and other secret societies [fol. 49] preceding the evolution, no doubt regarded with high disfavor by the then ruling powers and those in accord with them. Washington and many of his generals and other officers belonged to a secret society still in existence. Even in the most discouraging days of that period, we do not learn that the organization of such societies was generally regarded dangerous to the public welfare. Following the Revolutionary War other societies were formed composed of officers and soldiers. These have been continued in existence by their descendents. Similar organizations have sprung up from other wars. If people had desired to indulge in surmise and speculation, it would have been possible to reach a conclusion that to preserve an organization of soldiers in a time of peace would be a menace to the public safety. In fact, after every war including the last, those fears have been dominant in the minds of timid persons, apprehensive always of events that never happen.

Organization of men into societies to promote their common interest probably began in the early guilds or trades several centuries ago. These differed from the religious orders of even earlier origin. In later years these secret societies and clubs have been devoted more to recreation, benevolence, charity and social contact. That they usually have rituals, oaths, secret signs and grips is of little significance. These mysteries no doubt make membership more attractive, but do not necessarily render them dangerous to good order. However there is scarcely a society today [fol. 50] whose secrets have not been revealed and published by unworthy or apostate members.

These societies have grown greatly in number and membership within the last generation. Some have flourished for a time and then disintegrated; others have endured.

There is no doubt that practically all societies organized by American men and women for mutual benefit and intercourse, having no interest outside of or hostile to this country or its citizens, have been of great value in promoting fraternal spirit and acquaintance, and in benevolent, charitable and educational work. No doubt a majority of our male population belong to some secret society, so the question is much broader than the right of the relator or the society to which he belongs, but affects all societies and a great number of citizens.

There has at all times been some opposition to such organizations among persons naturally suspicious. In this State in the early half of the last century, one of the largest of such societies was bitterly assailed and charged with all sorts of crimes and delinquencies. A political party antagonistic to it was organized and for a time developed considerable strength. An attempt was made to proscribe the members of this society from holding political office. But the passion soon passed, and succumbed to natural moderation and good sense; and so far as I know, no legislation was required in the interest of public safety or welfare to suppress either the society or the political party which opposed it.

(fol. 51) So, at times to use different illustrations there has been for one reason and another, considerable public hostility and clamor against such organizations as the Salvation Army, Labor Unions and societies like the Knights of Labor, and the Socialists; but the fancied danger and the opposition passed without the necessity of repressive legislation.

These societies and associations of various kinds have so become a part of our social system that it is doubtful if legislation to abolish all secret societies, the good with the bad, would be constitutional. There can be no doubt that societies having principles subversive to the government or peace and good order may be banned and their members forbidden to meet. It has been done in this State (Penal Law, Sec. 160, 163). There are at present statutes preventing riotous assemblages (Penal Law, Sec. 2880, et seq.) and meetings of masked persons. (Id. 710, 711 and Code Crim. Pro., Sec. 887, subd. 7). My brother Sears mentions several societies which were organized for unlawful pur-

poses, and whose activities were inimical to peace and good order. They do not now exist, and it does not appear that any new legislation was necessary to bring their criminal activities to an end, least of all legislation of the type under consideration here.

In the main, legislation in this State, far from being hostile to such societies and voluntary associations, has encouraged and protected them. This must be due to a general [fol. 52] recognition that they are a useful part of our social structure. It has granted the right to sue and be sued, though unincorporated. (General Associations Law, Sec's. 12 & 13, formerly Code Civ. Pro. Sec. 1919). The Benevolent Orders Law and Membership Corporations Law permit such societies to incorporate and take and hold title to property. They are protected in the use of their particular names, title and badges, and their property from imposters. (Penal Law Secs. 936, 936a, 2240).

Granting the right to prohibit unlawful acts on the part of individuals or societies, I recognize no right under the police power to forbid or restrain the lawful activities of either, or to harass or annoy them by compelling them with no apparent purpose except to gratify idle curiosity, to reveal secret information lawfully acquired, and having no public interest. To justify such legislation, a menace to public safety and welfare must be manifest and the remedy afforded must be clear and have some definite relation to a recognized evil. If the legislature may under the pretext of providing for the public welfare, compel such secret societies to file their oaths and other documents with the Secretary of State, it may of course at any time require the same of those now excepted and it may likewise make similar requirements relative to the vows and canons of religious orders, or the members, programs and subjects of discussion of scientific bodies in advance of meetings, and failure to so file a crime,—the legislature being the sole judge of the necessity. There could be no useful purpose [fol. 53] served but great annoyance would follow such arbitrary and oppressive legislative policies.

As was said by O'Brien, J., in People v. Hawkins, 157 N. Y. 1, "It is important at the outset to ascertain, if we can, the legislative purpose and intent that led to the enactment." The district attorney conceded on the argument

that this statute was not aimed at any particular society but was of general application. We are left uninformed why it is necessary that all existing societies aside from those excepted, and all those oath-bound that shall be organized in the future for any purpose having twenty-one members or more should be required to file their documents. We are not dealing alone with one that may be harmful but with all those not expressly excepted, recognized as beneficial. If it is unlawful for a man to attend a meeting of a society that may be generally recognized as subversive to public welfare, which has not filed the required documents, so also under this statute is it a crime to attend a meeting of such a society whose purposes are admittedly innocent or commendable. It seems, under the original act (recently amended) all meetings within this state of college fraternities were unlawful, and all attending members have committed misdemeanors.

The constitution, by laws, roster, and oath of a secret society are its property. The right of a man to attend a meeting is a personal right. The power to confiscate the one and infringe upon the other with the penalty of imprisonment, must find its authority in some great and com- [fol. 54] pelling necessity involving public safety and welfare. The law may undoubtedly restrict the purposes of such organizations to those lawful, and forbid the organization and meetings of those unlawful. This statute does not purport to do that. When the documents are filed, meetings may lawfully be held and attended,—a strange method one would say, to provide for the public safety and welfare, and prevent the organization of subversive societies and punishing persons guilty of meeting for unlawful purposes.

To call into exercise the police power, there must be, as Hiscock, Ch. J., says, "a real evil, reasonably to be anticipated and to be guarded against, and if it appears on the face of the statute interpreted in the light of common knowledge that there is no evil or that there is no reasonable relation between the evil and the proposed remedy, or that the latter is unduly oppressive and confiscatory, the courts may pronounce the legislation unconstitutional and restrain its enforcement." (Stubbs v. Adamson, 220 N. Y. 469).

There must be also a distinction observed "between the regulation of an activity which may be engaged in as a

matter of right, and one carried on by government sufferance or permission." (Packard v. Banton, 264 U. S. 145).

The right of men to organize secret societies is, as I have said, an ancient one, long recognized both by custom and by law. There is no right to organize for improper pur-[fol. 55] poses and the legislature may in the exercise of its police power define unlawful purposes and forbid the organization of societies for purposes thus made unlawful. But there is no right in the legislature unreasonably to harass an individual or society by compelling him or it to reveal secrets in themselves innocent and of no public concern. A statute shocks the ordinary sense of justice, which causes a penalty of imprisonment because a man does not at a given moment file a private paper in a certain office, or because he attends a lodge meeting where some officer has failed to file, not once but repeatedly as slight changes occur, part of its secret records, innocent in themselves, in a public office. The statute to be valid must be fundamentally reasonable. In our long legal history, with the agitation at times against secret societies to which I have adverted, it is significant that until this statute was enacted, nothing like it had ever been known in connection with repressive police powers.

To quote again from the opinion of Judge O'Brien in the Haskins case, supra, "The guaranty against depriving a citizen of his liberty comprehends much more than the exemption of his person from all unlawful restraint. It includes the right to engage in any lawful business, and to exercise his faculties in any lawful trade, profession, or vocation. All laws, therefore, which impair or trammel these rights, or impose arbitrary conditions upon his right to earn a living, in the pursuit of a lawful business, are in-[fol. 56] fringements upon his fundamental rights of liberty which are under constitutional prohibitions. These rights may doubtless be affected by the exercise of the police power which is inherent in every sovereign state. But that power, however broad and extensive, is not above the constitution. The conduct of the individual and the use of property may be affected by its lawful and proper exercise in cases of overruling necessity and for the public good. * * * But no law which is otherwise objectionable as in conflict with the fundamental guarantees of the constitution can be upheld under the police power, unless the

court can see that it has some plain or reasonable relation to those subjects, or some of them."

The same rule that applies to "the right to earn a living and pursue a lawful business" applies also to the right of man to proper recreation, and lawful association with his fellow men.

There may not be unwarranted or arbitrary interference with property or personal rights long recognized as common and unlawful; even under the guise of police power or enforcing police regulations. (Dobbins v. Los Angeles, 195 U. S. 223). There must be patent reasons to justify the state in interposing its authority, and it must appear that the interests of the public generally, as distinguished from a particular class require such interference; and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. (Lawton v. Steele, 152 U. S. 133).

[fol. 57] Such is the rule generally recognized, and the courts do not hesitate to declare a statute unconstitutional where there is no question of public health, public safety or public welfare apparent; and where legislation adopts the guise of the police power to accomplish some purpose ulterior to those legitimate and proper, resulting in arbitrary and oppressive restrictions of the common rights of a free people in their property, occupations, recreations and associations, such an act is void. (People ex rel. Tyroler v. Warden, &c., 157 N. Y. 116; ex parte Whitwell, 98 Cal. 73; 19 L. R. A. 727; People v. Weiner, 271 Ill. 74; L. R. A. 1916 C. 775).

Because I believe the statute fundamentally unreasonable and oppressive, using the guise of the police power to invade arbitrarily an ancient and common right, with no obvious necessity or purpose, I favor reversal of the order dismissing the writ.

[fol. 58] In Supreme Court of New York, Appellate Division, Fourth Department

[Title omitted]

Notice of Appeal

Sirs: Please take notice that the relator, George W. Bryant, hereby appeals to the Court of Appeals of the State of New York, from the order of the Appellate Division of the Supreme Court, Fourth Judicial Department, dated the 22nd day of May, 1925, and entered in the office of the Clerk of the Appellate Division on the 22nd day of May, 1925, and in the office of the Clerk of the County of Erie, on the 25th day of May, 1925, in favor of the respondents and against the relator.

[fol. 59] You will also please take notice that the relator-appellant appeals from the said order and from each and every part thereof.

Grass, Grass & Gerken, Attorneys for the Relator. Office and P. O. Address: 351-3 Ellicott Square, Buffalo, New York.

Dated Buffalo, N. Y., June 2nd, 1925.

To Guy B. Moore, District Attorney, Erie County, New York; Albert Ottinger, Attorney General of the State of New York; Arthur R. Atkinson, County Clerk, Erie County, N. Y., and to Clerk of the Appellate Division, Fourth Department, Rochester, New York.

[fol. 60] In Supreme Court of New York

[Title omitted]

Stipulation Waiving Certification

It is hereby stipulated that the foregoing papers are true copies of the originals and of the whole thereof of the Writ of Habeas Corpus, return, order dismissing the writ of Habeas Corpus, notice of appeal to the Appellate Division, opinion submitted by the Supreme Court in deciding the

writ, affidavit and order permitting the Attorney General to intervene, Order of Affirmance, opinions of Justice Clark and Justice Sears, also dissenting opinions of Justice Davis, notice of appeal to the Court of Appeals, constitutes the full record on file in the Erie County Clerk's office and certification thereof by the Clerk is hereby waived.

Grass, Grass & Gerken, Attorneys for Relator. Guy B. Moore, Attorney for the People. Albert Ottinger, Attorney General, State of New York.

Dated August 20, 1925.

IN SUPREME COURT OF NEW YORK

CLERK'S CERTIFICATE

I, A. R. Atkinson, Clerk of the County of Erie, and also Clerk of the Supreme and County Courts for said County, the same being Courts of Record, do hereby certify that I have compared the annexed copy, appeal from order, order of affirmance, order on remittitur, etc., with the original thereof, entered and on file in the office of the Clerk of Erie County, and that the same is a correct transcript therefrom and of the whole of said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said County and Courts at Buffalo this 22nd day of March, 1926.

A. R. Atkinson, Clerk. (Seal.)

No. 14521.

[fol. 61] "D"

IN SUPREME COURT OF NEW YORK

[Title omitted]

ORDER ON REMITTITUR—January 15, 1926

The above entitled proceeding having been duly commenced by the petition of Florence E. Bryant dated and verified on October 1, 1924, the Writ of Habeas Corpus herein dated and allowed on the 1st day of October, 1924, the affidavit of Guy B. Moore subscribed and sworn to on

the 30th day of September, 1924, the warrant issued out of the City Court of Buffalo for the arrest of the relator George W. Bryant, dated the 30th day of September, 1924; and thereafter and on the 6th day of October, 1924, the relator having duly moved this Court, Hon. Charles A. Pooley, Justice Presiding, for an order sustaining said Writ of Habeas Corpus, and the respondents having opposed the same; and this Court having thereafter and on November 7, 1924, by its order duly made and entered, dismissed the said Writ of Habeas Corpus; and thereafter and on November 8, 1924, the relator having duly appealed from said order dismissing said Writ of Habeas Corpus, to the Supreme Court, [fol. 62] Appellate Division, Fourth Department; and thereafter and on the 5th day of May, 1925, said Supreme Court, Appellate Division, Fourth Department, having affirmed said order so appealed from, which said order of affirmance was duly entered in the Office of the Clerk of the Supreme Court, Appellate Division, Fourth Department, on the 22nd day of May, 1925, and thereafter duly filed in the Office of the Clerk of the County of Erie, on the 25th day of May, 1925; and thereafter and on June 2nd, 1925, said relator having duly appealed to the Court of Appeals of the State of New York from said order of affirmance of the Appellate Division, Supreme Court, Fourth Judicial Department, dated the 22nd day of May, 1925, and entered in the office of the Clerk of said Appellate Division on the 22nd day of May, 1925, and in the office of the Clerk of the County of Erie on the 25th day of May, 1925, and from each and every part of said order; and thereafter and on the 25th day of August, 1925, said relator having filed in the said Court of Appeals, the Notice of Appeal herein and return thereto, from said order of affirmance of the Appellate Division, Supreme Court in and for the Fourth Judicial Department and thereafter the said appeal having been duly argued before said Court of Appeals at the Court of Appeals Hall in the City of Albany, New York; and thereafter and on the 12th day of January, 1926, the said Court of Appeals having duly made and entered its order herein, wherein and whereby said Court of Appeals did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same was duly affirmed.

Now upon the remittitur in the above entitled proceeding issued out of the Clerk's office of said Court of Appeals of the State of New York, dated January 13, 1926, attached hereto, and on motion of Guy B. Moore, District Attorney of Erie County, it is,

[fol. 63] Ordered that the said order of the Court of Appeals of the State of New York in the above entitled proceeding, made and entered in the Office of the Clerk of the said Court of Appeals of the State of New York on the 12th day of January, 1926, be, and the same hereby is, made the order of this court.

Almon W. Lytle, J. J. C.

Granted Jan. 15, 1926. G. V. Laughlin, Sp. Dep. Clerk.

[fol. 63½] Due and personal service of three copies of the within Record on Appeal is hereby admitted this 24 day of August 1925.

Guy B. Moore, District Att'y of Erie County. John H. Clagston, Att'y General.

Filed Erie County, Clerk's Office, Aug. 25, 1925.

[fol. 64] In Court of Appeals of New York

[Title omitted]

Opinion

Civil Rights Law, Article 5 A (L. 1923, ch. 6640

53. Copies of Documents and Statements to be Filed.—Every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders, law, within thirty days after this article takes effect, and every such corporation or association hereafter organized, within ten days after the adoption thereof, shall file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and

a list of its officers for the current year. Every such corporation and association shall, in case its constitution, by-laws, rules, regulations or oath of membership or any part thereof, be revised, changed or amended, within ten days after such revision or amendment file with the Secretary of State a sworn copy of such revised, changed or amended constitution, by-law, rule, regulation or oath of membership. [fol. 65] Every such corporation or association shall within thirty days after a change has been made in its officers file with the Secretary of State a sworn statement showing such change. Every such corporation or association shall at intervals of six months file with the Secretary of State a sworn statement showing the names and addresses of such additional members as have been received in such corporation or association during such interval.

54. Resolutions Concerning Political Matters.—Every such corporation or association shall, within ten days after the adoption thereof, file in the office of the Secretary of State every resolution, or the minutes of any action of such corporation or association, providing for concerted action of its members or of a part hereof to promote or defeat legislation, federal, state or municipal, or to support or to defeat any candidate for political office.

55. Anonymous Communications Prohibited.—It shall be unlawful for any such corporation or association to send, deliver, mail or transmit to any person in this state who is not a member of such corporation or association any anonymous letter, document, leaflet or other written or printed matter, and all such letters, documents, leaflets or other written or printed matter, intended for a person not a member of such corporation or association, shall bear on the same the name of such corporation or association and the names of the officers thereof together with the addresses of the latter.

56. Offences; Penalties.—Any corporation or association violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than ten thousand dollars. Any officer of such corporation or association and every member of the board of directors, trustees or other similar body,

who violates any provision of this article or permits or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. [fol. 66] Any person who becomes a member of any such corporation or association, or remains a member thereof, or attends a meeting thereof, with knowledge that such corporation or association has failed to comply with any provision of this article, shall be guilty of misdemeanor.

The charge against him is that he attended a meeting of and remained a member of Buffalo Provisional Klan of the Knights of the Ku Klux Klan with knowledge that said association, which has more than twenty members, requires an oath as a prerequisite or condition of membership, and is not a labor union or a benevolent order mentioned in the Benevolent Orders Law (Cons. Laws, ch. 3) had not complied with the provisions of the statute by filing with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year. His contention is that the statute is void for unconstitutionality in that it deprives him of his liberty without due process of law and denies him the equal protection of the law for the reason that it is arbitrary and discriminatory class legislation.

Secret societies have, in the past, been recognized as meeting a desire of many of our citizens to band themselves together by oaths more horrific than harmful. Thus in Purple v. Horton (13 Wend. 2) the court had before it the oath of a master mason and found nothing therein to disqualify a freemason as a juror in an action where one of the parties to a suit at law was a freemason and the other was not. The act before us places its approval on numerous well-known lodges, chapters, commanderies, consistories, councils, temples, grottos, posts, tribes, aeries, camps, tents, roofs, encampments and cantons wherein brothers, sisters, sons or daughters are united in mystic ties (Ben. Orders Law, § 2). Labor unions and, more recently, college fraternities and sororities (L. 1925, ch. 521) whose names is legion, have also received legislative approval. They have [fol. 67] a good reputation, at least the Legislature has recognized the innocuous, if not excellent, character which they claim for themselves.

But the Legislature may take notice of the potentialities of evil in secret societies, and may regulate them reasonably without depriving the members thereof of their liberty without due process of law. Indeed, the danger of certain organizations has been judicially demonstrated. The manifesto of the political party known as the Left Wing of the Socialist Party, or Communists, has been said openly to advocate criminal anarchy in violation of the Provisions of the Penal Law (People v. Gitlow, 234 N. Y. 132; affirmed 45 S. C. 625) Secret societies may be formed for the same purposes. The Legislature must, however, adopt a reasonable ground of classification in regulating such secret societies and organizations (Lawton v. Steele, 152 U. S. 133; People v. Kinck Packing Co., 214 N. Y. 121; People v. Beakes Dairy Co., 222 N. Y. 416, 429). It cannot legitimately vent its permanent or passing wrath on a single society unless such society is known or shown to be in a class by itself. The present statute addresses itself to very general characteristics which admittedly may include the most laudable as well as the vicious. It seems reasonable to separate the known from the unknown, the presumptively good from the possibly evil, the sheep from the goats. Benevolent orders, labor unions and college fraternities have existed for many years and while not immune from hostile criticism, have on the whole justified their existence. Conceivably those that remain, or some of them, might win equal favor on better acquaintance. With the wisdom of the legislation in question we have not to do. The Legislature may doubtless strike at a fancied evil, believed by many to exist, without balancing with accuracy the actual danger to the State against the beneficent purposes publicly avowed by the members of such societies (Otis v. Parker, 187 U. S. 606, 609). It follows that a classification which does not include all oath-bound secret societies may be reasonable. {fol. 68} Another objection to the statute requires consideration. The act in question aims only at societies which require an oath as a prerequisite or condition of membership. Similiar organizations which are not oath bound are entirely outside of its provisions. Any organization under the ban might take itself out of the regulations by adopting a solemn pledge or affirmation rather than an oath.

A promissory oath is defined by Webster's New International Dictionary as a solemn appeal to God, or in a wider

sense, to some superior sanction or a sacred or revered person (as the temple, the altar, the blood of Abel, the Koran, a tribal superior, etc.) * * * in witness of the inviolability of a promise or undertaking."

The State in dealing with judicial oaths, which are taken as a sanction for the truth of an affirmation or declaration in legal or quasi-legal matters, like the oath of a witness or an affiant, defines "oath" (Gen. Const. Law, g 36; Cons. Laws ch. 22) to "include every mode authorized by law of attesting the truth of that which is stated," and punishes for perjury both one who swears and one who affirms that any material matter is true which is known to be false. (Penal Law, gg 1620, 1621; Cons. Laws, ch. 40.)

The policy of the state is, therefore, to disregard the form of the sanction "on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered."

Public policy thus makes no distinction between oaths and affirmations so far as the pains and penalties of perjury are concerned. But promissory oaths are not included in the definitions quoted. They may not be the basis of a criminal prosecution for perjury. The faithless public official who violates his oath of office is punishable but not for perjury.

Can it be said that a solemn promise or obligation, not in the form of an oath or appeal to Almighty God, is not as binding on the conscience of the ordinary member of a [fol. 69] secret organization as the oath would be? Is such a distinction a sound basis for classification? Does it arbitrarily discriminate against those who believe in a Supreme Being or higher power? Is the line drawn with any well-defined moral admeasurement between potential good and bad? These considerations address themselves to the law-making power if not to the courts.

Assuming that all might be included, on judicial review, a classification is not held to be bad because it is not comprehensive. The Legislature, need not attack the whole evil at once. (Keokee Coke Co. v. Taylor, 234 U. S. 224, 227.) Certain oath-bound societies have in the past, as matter of common knowledge, been revolutionary and a menace to established government. For the purpose of

regulating Sunday labor one rule has been made for barbers in New York and Saratoga, while another rule is applied to the rest of the State. (People vs. Havnor, 149 N. Y. 195.) As an oath is recognized by many as the highest form of obligation, a distinction may reasonably be made between oath-bound secret societies and societies which bind their members by pledges of less time-honored solemnity and between accepted oath-bound societies and oath-bound societies in general. The classification we have to consider is real and readily made as matter of form. It may not rest on a very substantial basis in the opinion of many, but "the power to declare a law unconstitutional is always exercised with reluctance." (Pollock v. Farmers' Loan & Trust Co. 157 U. S. 429, 554.) The enactment before us may be upheld as not "actually and palpably unreasonable and arbitrary" on the authority of precedents which have gone far to uphold legislative power in matters of classification. (Radice v. New York, 264 U. S. 292, 296, 297.) It rests on an opinion reasonably permissible for its validity.

The order should be affirmed.

Hiscock, Ch. J., Cardozo, McLaughlin, Andrews and Lehman, JJ., concur with Pound, J.; Crane, J., Concurs in result.

Order affirmed.

[fol. 70] Attorney's certificate to foregoing paper omitted in printing.

[fol. 71] In Supreme Court of New York

[Title omitted]

Affidavit of Eugene E. Grass

State of New York,
County of Erie,
City of Buffalo, ss:

Eugene E. Grass, being sworn, deposes and says that he is an attorney and counsellor at law of the State of New York and that he was one of the attorneys for George C. Bryant, relator in the Court of Appeals of the State of

New York, and still is the attorney for said George C. Bryant and has had charge of all the proceedings in said action from its inception in the City Court of Buffalo to and including the Court of Appeals of the State of New York and that he is one of the attorneys for said George C. Bryant named in the above entitled action in his application for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of New York in and for Erie County.

Deponent further deposes and says that the opinion of Justice Pooley of the Supreme Court of the State of New York and the opinions of Justices Clark, Sears and Davis of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department are fully set forth and included in the printed Record of said above entitled action in said Court of Appeals and that in the Court of Appeals only one opinion was rendered and that by Judge Cuthbert W. Pound, a copy of [fols. 72 & 72½] which opinion is annexed hereto and that the foregoing are all of the opinions rendered by the Judges presiding at the Special Term of the Supreme Court in and for Erie County of the State of New York and at the Appellate Division of the Supreme Court of New York in and for the Fourth Judicial Department and in the Court of Appeals of the State of New York and that no other opinions were rendered by any of the Judges of said courts.

Eugene E. Grass.

Sworn to before me this 22nd day of March, 1926. Francis E. Bagot, Notary Public, Erie County, New York. (Seal of Francis E. Bagot, Notary Public, Erie County, N. Y.)

[fol. 73] In Supreme Court of New York

[Title omitted]

Petition for Writ of Error—March 15, 1926

To the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York:

The petition of George C. Bryant, who resides in the City of Buffalo, County of Erie and State of New York, respectfully shows:

First. That he is a citizen of the United States and was such on the first day of October, 1924, and prior thereto and thereafter and that on the first day of October, 1924, the petitioner was arrested by the Sheriff of the County of Erie and State of New York and taken into custody and confined in the City of Buffalo in the County Jail of the County of Erie and State of New York upon a warrant issued on the 30th day of September, 1924, by George W. Woltz, Chief Judge of the City Court of Buffalo, which warrant was issued upon a verified information made and sworn to on the 30th day of September, 1924, by Honorable Guy B. Moore, the District Attorney of Erie County in the State of New York, set forth at pages 5 to 8 inclusive of the printed Record on Appeal in the Court of Appeals in the above entitled action, to which reference is herein made and which is made a part hereof, charging the said George C. Bryant with failure to comply with Article 5-A of the Civil Rights Law of the State of New York and alleging [fol. 74] that William C. Bryant on or about the 26th day of August, 1924, did willfully and wrongfully commit the crime of violating Section 56 of Article 5-A of the Civil Rights Law of the State of New York by attending a meeting of an unincorporated association sometimes known as the Buffalo Provisional Klan of the Knights of the Ku Klux Klan, which association had continued to exist from the 22nd day of May, 1923, to and including the 31st day of August, 1924, and which consisted of more than twenty persons which required an oath as a prerequisite and as a condition of membership therein and said information further charged the said William C. Bryant with remaining a member thereof until on or about the 31st day of August, 1924, and for some time thereafter and that between the 22nd day of May, 1923, and the 31st day of August, 1924, the said William C. Bryant did attend various meetings of said unincorporated association held in the City of Buffalo, New York, and that the said William C. Bryant had knowledge that said unincorporated association had failed to comply with Article 5-A of the Civil Rights Law of the State of New York in that said unincorporated association had failed and neglected to file with the Secretary of State of the State of New York and that the officers thereof and the members

thereof had failed to comply with said article which among other things required said unincorporated association to file with the Secretary of State of the State of New York a sworn copy of its constitution, by-laws, rules, regulations, oath of membership and roster of its membership and a list of its officers for the current year or any of them, alleged in the petition of said Guy B. Moore, and further charging the said William C. Bryant of attending a meeting of the aforesaid unincorporated association with knowledge that the aforesaid law had not been complied with in any respect and that the said William C. Bryant on or about said day remained a member of said unincorporated association with the knowledge that said unincorporated association had failed to comply with the provisions of the aforesaid law [fol. 75] in any respect and that said meeting so attended by William C. Bryant was held in the City of Buffalo, New York, on or about said 26th day of August, 1924.

Second. The provisions of Chapter 664 of the Laws of 1923 of the State of New York read as follows:

Civil Rights Law, Article 5-A (L. 1923, ch. 664)

"53. Copies of Documents and Statements to be Filed.—Every existing membership corporation, and every existing and unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders law, within thirty days after this article takes effect, and every such corporation or association hereafter organized, within ten days after the adoption thereof, shall file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year. Every such corporation and association shall, in case its constitution, by-laws, rules, regulations or oath of membership or any part thereof, be revised, changed or amended, within ten days after such revision or amendment file with the Secretary of State a sworn copy of such revised, changed or amended constitution, by-law, rule, regulation or oath of membership. Every such corporation or association shall

within thirty days after a change has been made in its officers file with the Secretary of State a sworn statement showing such change. Every such corporation or association shall at intervals of six months file with the Secretary of State a sworn statement showing the names and addresses of such additional members as have been received in such corporation or association during such interval.

54. Resolutions Concerning Political Matters.—Every such corporation or association shall, within ten days after the adoption thereof, file in the office of the Secretary of State every resolution, or the minutes of any action of such [fol. 76] corporation or association, providing for concerted action of its members or of a part thereof to promote or defeat legislation, federal, state or municipal, or to support or to defeat any candidate for political office.

55. Anonymous Communications Prohibited.—It shall be unlawful for any such corporation or association to send, deliver, mail or transmit to any person in this state who is not a member of such corporation or association any anonymous letter, document, leaflet or other written or printed matter, and all such letters, documents, leaflets or other written or printed matter, intended for a person not a member of such corporation or association, shall bear on the same the name of such corporation or association and the names of the officers thereof together with the addresses of the latter.

56. Offences; Penalties.—Any corporation or association violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than ten thousand dollars. Any officer of such corporation or association and every member of the board of directors, trustees or other similar body, who violates any provision of this article or permits or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. Any person who becomes a member of any such corporation or association, or remains a member thereof, or attends a meeting thereof, with knowledge that such corporation or association has failed to comply with any provision of this article, shall be guilty of misdemeanor."

The punishment for such misdemeanor is regulated by Section 1937 of the Penal Law, which prescribes imprisonment in a penitentiary or county jail for not more than one year or by a fine of five hundred dollars, or by both.

The information charged William C. Bryant and the warrant charged George C. Bryant with the violation only of Section 56 of Article 5-A of the Civil Rights Law of the [fol. 77] State of New York.

That all of said sections were enacted by Chapter 664 of the laws of the State of New York for the year 1923 and took effect on May 23, 1923, and the petitioner alleged that said imprisonment of George W. Bryant and restraint was illegal in this, to wit:

That the Magistrate was without jurisdiction to issue the warrant or cause his arrest, inasmuch as chapter 664 of the Laws of 1923, is unconstitutional and void and of no force or effect and the facts alleged in the information upon which said warrant was issued did not constitute a crime.

Third. That after said George C. Bryant had been so imprisoned and while still imprisoned in the Erie County Jail in the City of Buffalo, County of Erie and State of New York, a petition was made on the first day of October, 1924, by Florence E. Bryant on behalf of said George C. Bryant addressed to Charles F. Zimmerman, Chief of Police of the City of Buffalo, to Frank W. Tyler, Sheriff of the County of Erie in the State of New York and to Deputy Sheriff Wahl of the County of Erie in the State of New York, praying that a writ of Habeas Corpus issue out of the Supreme Court directed to said Charles F. Zimmerman, Chief of Police of Buffalo, New York, Frank W. Tyler, Sheriff of Erie County, New York, and Deputy Sheriff Wahl of Erie County, State of New York, commanding him to have the body of George W. Bryant, by whatsoever name called or charged, by him imprisoned and detained of his liberty with the cause of such imprisonment and detention before the Honorable Charles A. Pooley at a Special Term of the Supreme Court, Erie County, on the first day of October, 1924, forthwith of that day pursuant to the provisions of the Civil Practice Act, which writ of Habeas Corpus was allowed by Mr. Justice Charles A. Pooley on the first day of October, 1924; that in compliance with said information

the matter came on at a Special Term of the Supreme Court in and for the County of Erie in the City and County Hall in the City of Buffalo on the 6th day of October, 1924, [fol. 78] before Honorable Charles A. Pooley, Justice Presiding, and after the presentation of the facts and arguments on the part of counsel for the relator and for the People of the State of New York it was ordered by said Special Term of the Supreme Court that said writ of Habeas Corpus bearing date October 1st, 1924, be dismissed and the same was dismissed and the opinion of Mr. Justice Pooley in so ordering is set forth at pages 16 to 23 of the printed Record on Appeal to the Court of Appeals in the above entitled action.

That on the 23rd day of October, 1924, the Attorney General of the State of New York made formal application to be permitted to intervene in said case and an order was made on October 24th, 1924, authorizing Carl Sherman as Attorney General of the State of New York to intervene as an additional party defendant in said proceeding as shown by the records of such proceedings printed at pages 10 and 11 of the printed Record in the Court of Appeals in the above entitled action.

Fourth. That on the 8th day of November, 1924, the relator, George C. Bryant, erroneously designated in said appeal papers as George W. Bryant, appealed to the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department from the decision of the Special Term of the Supreme Court made on the 6th day of October, 1924, and filed in the office of the County Clerk of Erie County, New York, on the 7th day of November, 1924, dismissing the writ of Habeas Corpus issued in the above entitled action which was allowed on the first day of October, 1924, and said relator duly appealed from said order dismissing said writ and from each and every part thereof and served notice of said appeal on the District Attorney of Erie County, the Attorney General of the State of New York and the County Clerk of Erie County.

Said appeal having been brought on for argument in the Appellate Division of the Supreme Court in and for the Fourth Judicial Department at the City of Rochester at a [fol. 79] term commencing on the 5th day of May, 1925, and

thereafter on the 22nd day of May, 1925, said Appellate Division ordered that the order of the Special Term appealed from be affirmed and opinions were written by the Justices of the Appellate Division of the Supreme Court, which are set forth in the printed Record on Appeal to the Court of Appeals in the above entitled action at pages 28 to 57 both inclusive; that the opinions of Mr. Justice Clark and that of Mr. Justice Sears were for the affirmance of said order and the opinion of Mr. Justice Davis was for the reversal of said order.

That on June 2nd, 1925, the relator appealed to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department dated on the 22nd day of May, 1925, and entered in the office of the Clerk of the Appellate Division on the 22nd day of May, 1925, and in the office of the Clerk of the County of Erie on the 25th day of May, 1925, and from each and every part of said order of affirmance as set forth in the printed Record on Appeal to the Court of Appeals in the above entitled action at pages 58 to 59 thereof; that said matter came on for argument in the Court of Appeals and was decided on January 12th, 1926, by the judgment of the Court of Appeals which affirmed the order of the Appellate Division in the above entitled matter and the opinion of the Court of Appeals was rendered by Judge Pound and sustained the constitutionality of Chapter 664 of the Laws of 1923 under which the relator George C. Bryant was imprisoned and deprived of his liberty as hereinbefore stated.

Fifth. It was the contention of the relator at Special Term of the Supreme Court of the State of New York and in the Appellate Division in and for the Fourth Department and in the Court of Appeals of the State of New York, that Chapter 664 of the Laws of 1923 was unconstitutional and void in that it was repugnant to and in violation of the [fol. 80] clause of Section 6 of Article 1 of the Constitution of the State of New York, which reads as follows, namely: "No person shall be deprived of life, liberty or property without due process of law," and that said Chapter 664 of the Laws of 1923 was also repugnant to those provisions of Section 1 of Article 14 of the Amendments of the Constitution of the United States, which read as follows,

namely: "Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This is evidenced from the reading of the opinion of Justice Pound wherein he says "His (relator's) contention is that the statute is void for unconstutionality in that it deprives him (relator) of his liberty without due process of law and denies him (relator) the equal protection of the law for the reason that it is arbitrary and discriminatory class legislation."

Mr. Justice Pooley at Special Term said (Record page 19) that "The statute is assailed on the ground that it is class legislation, wrongfully restricting the personal liberty of certain citizens in an unreasonable and arbitrary manner." The opinion of Mr. Justice Clark in the Appellate Division of the Supreme Court in and for the Fourth Judicial Department contains the following statement that the "Relator contends that the statute in question is unconstitutional for the reason that it is class legislation and wrongfully restricts the personal liberty of certain citizens and that it compels certain corporations and associations and the officers thereof to furnish evidence against themselves which might be used in a criminal prosecution against them" (Record page 29).

Mr. Justice Clark said further (Record page 31) that "Relator complains that the exemption in said statute of labor unions and the benevolent orders mentioned in the Benevolent Orders Law is an unlawful classification in violation of Sec. 6 of Article 1, of the Constitution of the State of New York, which provides among other things that [fol. 81] no person shall be deprived of life, liberty or property without due process of law, and of Sec. 1 of the 14th Amendment of the Federal Constitution, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States, and that no state shall deprive any citizen of life, liberty, or property, without due process of law, and that no state shall deny to any person within its jurisdiction the equal protection of the law.

Relator also complains that the act which he is charged with violating is unconstitutional because it limits the application of its provisions to associations of twenty or more

persons, because as it is claimed it is an unlawful discrimination and classification in violation of the aforesaid provisions of the constitution."

Sixth. There was thus disclosed in the record and there appears from the Record by clear and necessary intendment that the Federal question was directly involved and considered by the state courts which could not have given judgment in this case adverse to the contention of the petitioner without deciding such Federal question. The definite issue as to the validity of Chapter 664 of the New York Laws of 1923 under the Fourteenth Amendment of the Constitution of the United States is distinctly deducible from the Record in the state courts of New York. The validity of such statute, which was challenged by the relator in all the Courts of New York as being repugnant to and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, was upheld by the Supreme Court at Special Term and by the Appellate Division of the Supreme Court in and for the Fourth Judicial Department and by the Court of Appeals, the highest court of the State of New York. The said decision, order or judgment of said Court of Appeals, which was adverse to the claim of the petitioner, turned essentially upon a question of the Federal constitutional provision contained in section one of the Fourteenth Amendment of the Consti- [fol. 82] tution of the United States which reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and that no state shall deprive any citizen of life, liberty, or property, without due process of law, and that no state shall deny to any person within its jurisdiction the equal protection of the law." The petitioner, then relator, argued, insisted and asked in all the state courts that they rule and decide that said Chapter 664 of the New York Laws of 1923 denied to the petitioner and other citizens of the state within its jurisdiction the equal rights and privileges and equal protection of the laws as guaranteed by the Fourteenth Amendment of the Federal Constitution (Ex Parte Commonwealth of Virginia, 100 U. S. 313-339; Ex Parte Clarke, 100 U. S. 399; Ex Parte Siebold, 100 U. S. 371-399; 404-429). The petitioner argued, insisted and contended at

the Special Term of the Supreme Court, in the Appellate Division and in the Court of Appeals that said Chapter 664 of the New York Laws of 1923 is repugnant to and violative of the fundamental principles of justice, embraced in the conception of the due process of law for the preservation of life, liberty or property and is also repugnant to and violative of the fundamental conception of the equal protection of the laws, guaranteed by the Fourteenth Amendment of the Constitution of the United States to all citizens thereof, of whom the petitioner is one.

Seventh. The Federal question was properly raised by the petitioner upon his application for writ of Habeas Corpus on October 1st, 1924, in the Supreme Court of the State of New York, which is the court of original jurisdiction and was empowered under the constitution and the laws of the State of New York to issue and did issue on October 1st, 1924, the writ of Habeas Corpus in this case to inquire into the cause of imprisonment of the relator, George W. Bryant by whatsoever name he is called or charged, who is [fol. 83] the petitioner, and to that end in a case prescribed by law said court was empowered to deliver the relator from such imprisonment as authorized by Section 1230 of the Civil Practice Act of the State of New York, which reads as follows:

"Persons Entitled to Writs.—A person imprisoned or restrained in his liberty, within the state, for any cause or upon any pretense, is entitled, except in one of the cases specified in the next section, to a writ of Habeas Corpus or a writ of certiorari, as prescribed in this article, for the purpose of inquiring into the cause of the imprisonment or restraint, and, in a case prescribed by law, of delivering him therefrom."

The petitioner respectfully avers that the decision, order or judgment upon said Habeas Corpus of the Court of Appeals and lower courts of New York, which took jurisdiction under the Civil Practice Act of that state of the Federal question involved in this action and upheld the validity of said Chapter 664 of the Laws of 1923 of the State of New York adversely to the contention of the petitioner in those courts, who contended that said act was in violation of the

petitioner's rights under the Fourteenth Amendment of the Constitution of the United States, is reviewable, the petitioner avers, on Writ of Error from the Supreme Court of the United States by that Court. (See Opinion in Urquart v. Brown, 205 U. S. 182; Bushel's case, 6 Howell's State Trials 999, cited with approval in ex parte Siebold, 100 U. S. 376, wherein a Habeas Corpus was issued to release twelve jurymen who acquitted William Penn and others charged with meeting in conventicle contrary to statute.)

Eighth. Petitioner further avers that said statute, Chapter 664 of the said New York State Laws of 1923, is repugnant to and violative of said provisions of Section 1 of Article Fourteen of the Constitution of the United States and is therefore null and void and said arrest and imprisonment of the petitioner thereunder was illegal and an un- [fol. 84] lawful restraint of his liberty, from which arrest and imprisonment he petitioned to be released on said writ of Habeas Corpus pursuant to the established procedure under the Civil Practice Act of the State of New York, which release was denied to the petitioner by the Supreme Court at Special Term on November 7th, 1924 (Record 12-13) and its decision, order or judgment was affirmed in the Appellate Division of the Supreme Court by a divided court on May 22nd, 1925 (Record 27) and said latter decision, order or judgment of the Appellate Division *of the Appellate Division* of the Supreme Court was affirmed by the Court of Appeals, the highest court in the State of New York on January 12th, 1926 (Record —) and upon the sending down of the Remittitur of said Court of Appeals to the Supreme Court in and for Erie County, New York, an order of affirmance of its said decision, order or judgment was made and entered pursuant to the mandate thereof the decision, order or judgment of the Supreme Court in and for Erie County, New York, in the office of the Clerk of Erie County and State of New York by the Supreme Court of that state at a Special Term thereof held in the City of Buffalo, New York, on the 15th day of January, 1926, whereby the petitioner was denied his release from imprisonment for the alleged violation of said Section 56 of Article 5-A of the New York Civil Rights Law, enacted by Chapter 664 of the New York State Laws of 1923 and this

petitioner further avers that he was thereby denied a title, right, privilege and immunity held by this petitioner under the Constitution of the United States and he was also deprived of and denied his liberty without due process of law and also denied the equal protection of the laws, all in violation of the express inhibitions of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Ninth. The petitioner further shows that said remittitur of the Court of Appeals and said final order and all papers and transcripts of all proceedings in this action are now [fol. 85] lodged with the County Clerk of Erie County, New York, and are matters of record in the office of the Clerk of the County of Erie in the State of New York. Said decision, order or judgment of the Supreme Court of New York so affirmed by the Court of Appeals of the State of New York is the final decision, order or judgment of the highest court of the State of New York, which the Supreme Court of the United States, as disclosed in the Record of this case, has jurisdiction to review upon Writ of Error under its rules and the statute in such case made and provided as the validity of the state statute namely, Chapter 664 of the Laws of 1923, is drawn in question. See Section 237 of the Judicial Code of the United States as amended by the Act of February 13th, 1925.

Tenth. This petitioner further shows that his name is George C. Bryant but that the Information of the District Attorney of Erie County erroneously designated petitioner as William C. Bryant and the writ of Habeas Corpus and the order dismissing the same, some other parts of the record erroneously designated the petitioner as George W. Bryant, so that the petitioner appears as relator under such three names due to such erroneous designations.

Wherefore this petitioner feeling himself aggrieved by said decision, order or judgment of the Court of Appeals, the highest court of the State of New York, affirming the decision, order or judgment of the lower courts of the State of New York in the above entitled action, prays that a Writ of Error may be allowed and issue directed to the Honorable Justices of the Supreme Court of the State of New York and to the County Clerk of Erie County of the State of New

York, to bring up for review before the Supreme Court of the United States said decision, order or judgment of the Supreme Court of the State of New York in and for Erie County, dismissing petitioner's Writ of Habeas Corpus and this petitioner presents an exemplified transcript of the record in this case of the Supreme Court of the State of New York in and for Erie County, including certified copies of the original petition of the District Attorney of Erie [fol. 86] County, New York, of the warrant of arrest of George C. Bryant granted by George W. Woltz, Chief Judge of the City Court of Buffalo, of the petition of Florence E. Bryant for writ of Habeas Corpus, of the writ of Habeas Corpus granted by Mr. Justice Pooley of the Supreme Court, of the affidavit and order permitting the Attorney-General of the State of New York to intervene, of the order of the Supreme Court of the State of New York dismissing the writ of Habeas Corpus, of the order of affirmance of the Apellate Division of the Supreme Court in and for the Fourth Judicial Department and of the opinions of the Justices thereof, of the order of affirmance of the Court of Appeals of the State of New York and the opinion of Judge Pound thereof and of the Order of Remittitur of the Court of Appeals, the judgment of the Supreme Court of the State of New York in and for Erie County, entered on January 15th, 1926, pursuant to said Order of Remittitur, of parts of the statute, Chapter 664 of the New York Laws of 1923 and also certified transcripts of all other papers and proceedings in the above entitled action to the end and in order that the errors complained of by the petitioner may be reviewed by the Supreme Court of the United States and that said decision, order or judgment of the said Court of Appeals and the decision, order or judgment of the Supreme Court of the State of New York in and for Erie County in this action and the decision, order or judgment of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department may each and all be reversed and that the petitioner may be released from imprisonment and restored to his liberty, and the petitioner also presents herewith his assignment of errors on this application for Writ of Error and a bond required by the Supreme Court of the United States on an application for a Writ of Error from said court, which bond the petitioner respectfully prays may

be approved, and he also prays that citation required by said rules may be granted and signed, and he also prays that he may have such other or further relief as may be just and proper and the petitioner will ever pray.

[fol. 87] George C. Bryant, Petitioner. Grass & Grass, Attorneys for the Petitioner. William Francis Zumbrunn, of Counsel.

Dated March 15th, 1926.

Duly sworn to by George C. Bryant. Jurat omitted in printing.

[fols. 88 & 88½] Read on application for Writ of Error the — day of March, 1926.

————, Chief Judge of the Court of Appeals, the highest court of the State of New York.

[fol. 89] In Supreme Court of New York

[Title omitted]

Assignments of Error—March 15, 1926

Now comes George C. Bryant, the relator-appellant in the above entitled action, also designated herein as plaintiff-in-error, and respectfully submits that in the record, proceedings, decision, order or final judgment of the Court of Appeals of the State of New York and of the lower courts of said State in the above entitled matter there is manifest error and the said George C. Bryant makes and files this, his assignment of errors together with his petition for Writ of Error for the purpose of having such errors reviewed in the Supreme Court of the United States, to wit:

First. The Court of Appeals of the State of New York erred in holding, ruling and deciding that Section 56 of Article 5-A of the Civil Rights Law of New York and other provisions of Chapter 664 of the New York Laws of 1923 were not in conflict with Section 1 of Article Fourteen of the Amendments of the Constitution of the United States, which provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and in affirming the order [fol. 90] of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department, which affirmed the order of the Special Term of the Supreme Court of the State of New York in and for Erie County, dismissing the writ of Habeas Corpus granted on behalf of the petitioner by the Supreme Court of the State of New York in and for Erie County on October 1st, 1924, to inquire into the cause of his imprisonment and detention and in not releasing the petitioner from such imprisonment and detention.

Second. The Court of Appeals of the State of New York erred in holding, ruling and deciding that the provisions of Section 56 of Article 5-A of the Civil Rights Law of the State of New York, enacted by Chapter 664 of the New York State Law of 1923, did not deprive the petitioner, also designated as plaintiff-in-error, of his rights, privileges and immunities guaranteed to other citizens of the United States and of the State of New York by the Constitution of the United States and the laws of the United States, as petitioner asserted had been and was being done unto him by the enforcement of said statute.

Third. The Court of Appeals of the State of New York erred in holding, ruling and deciding that by the enforcement of the provisions of Article 5-A of the Civil Rights Law of the State of New York, enacted by Chapter 664 of the New York Laws of 1923, the petitioner, also designated as plaintiff-in-error, is not deprived of his liberty without due process of law, contrary to the inhibition contained in Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Fourth. The Court of Appeals of the State of New York erred in holding, ruling and deciding that by the provisions of Article 5-A of the Civil Rights Law of the State of New York, enacted by Chapter 664 of the New York Laws of 1923, the petitioner, also designated as plaintiff-in-error, was not denied the equal protection of the laws in violation of the express inhibition contained in Section 1 of Article 14

[fol. 91] of the Amendments of the Constitution of the United States.

Fifth. The Court of Appeals of the State of New York erred in holding, ruling and deciding that the authority exercised under the provisions of said Chapter 664 of the New York Laws of 1923 were within the police powers of the legislature of the State of New York and not in contravention of the inhibition contained in Section 1 of Article 14 of the Amendments of the Constitution of the United States.

Sixth. The Court of Appeals of the State of New York erred in holding, ruling and deciding that neither the provisions of Section 56 of Article 5-A of the Civil Rights Law of the State of New York nor any other provisions of Chapter 664 of the New York Laws of 1923, which read as follows:

"Section 53. Copies of documents and statements to be filed. Every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders law, within thirty days after this article takes effect, and every such corporation or association hereafter organized, within ten days after the adoption thereof, shall file with the secretary of state a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year. Every such corporation and association shall, in case its constitution, by-laws, rules, regulations or oath of membership or any part thereof, be revised, changed or amended, within ten days after such revision or amendment file with the secretary of state a sworn copy of such revised, changed or amended constitution, by-law, rule, regulation or oath of membership. Every such corporation or association shall within thirty days after a change has been made in its officers file with the secretary of state a sworn statement showing such change. Every such corporation or associa-
[fol. 92] tion shall at intervals of six months file with the secretary of state a sworn statement showing the names

and addresses of such additional members as have been received in such corporation or association during such interval.

Section 54. Resolutions Concerning Political Matters.—Every such corporation or association shall, within ten days after the adoption thereof, file in the office of the secretary of state every resolution, or the minutes of any action of such corporation or association, providing for concerted action of its members or of a part thereof to promote or defeat legislation, federal, state or municipal, or to support or to defeat any candidate for political office.

Section 55. Anonymous Communications Prohibited.—It shall be unlawful for any such corporation or association to send, deliver, mail or transmit to any person in this state who is not a member of such corporation or association any anonymous letter, document, leaflet or other written or printed matter, and all such letters, documents, leaflets or other written or printed matter, intended for a person not a member of such corporation or association, shall bear on the same the name of such corporation or association and the names of the officers thereof together with the addresses of the latter.

Section 56. Offenses; Penalties.—Any corporation or association violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than ten thousand dollars. Any officer of such corporation or association and every member of the board of directors, trustees or other similar body, who violates any provision of this article or permits or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. Any person who becomes a member of any such corporation or association, or remains a member thereof, or attends a meeting thereof, with knowledge that such corporation or association has failed to comply with any provision of this article, shall be guilty of a misdemeanor." [fol. 93] were repugnant to the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States which read as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Such New York State statute took effect May 22nd, 1923.

Seventh. The Court of Appeals of the State of New York erred in holding, ruling and deciding that the provisions of said Chapter 664 of the New York Laws of 1923 do not unlawfully discriminate between citizens of the United States, of whom the petitioner is one, and abridge the privileges or immunities of citizens of the United States nor deprive the petitioner, also designated as plaintiff-in-error, and other citizens similarly situated of his and their liberty without due process of law.

Eighth. The Court of Appeals of the State of New York erred in holding, ruling and deciding that by the provisions of said Chapter 664 of the New York Laws of 1923 the petitioner and other citizens of the United States similarly situated were not deprived of the equal protection of the laws contrary to the inhibition contained in Section 1 of Article 14 of the Amendments of the Constitution of the United States.

Ninth. The Court of Appeals of the State of New York erred in affirming the order of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department in this case, which order affirmed the decision of the Supreme Court of the State of New York at Special Term, by which latter court petitioner's Writ of Habeas Corpus was dismissed and petitioner was not released from imprisonment and was restrained of his liberty contrary to the provisions of Section 1 of Article 14 of the Amendments of the Constitution of the United States.

Tenth. The Court of Appeals of the State of New York [fol. 94] erred in ordering judgment remanding the record and proceedings in this case to be remitted to the Supreme Court of the State of New York at Special Term in and for the County of Erie and there to be proceeded with according to law.

Eleventh. The Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial

Department erred in holding, ruling and deciding that the provisions of said Chapter 664 of the New York Laws of 1923 were not in conflict with and in violation of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States for the reasons hereinbefore stated in paragraphs "First" to "Tenth," which are herein referred to and made a part of this Assignment of Errors.

Twelfth. The Supreme Court of the State of New York at Special Term erred in holding, ruling and deciding that the provisions of said Chapter 664 of the New York Laws of 1923 were not in conflict with and in violation of the provisions of Section 1 of Article 14 of the Amendments of the Constitution of the United States for the reasons hereinbefore stated in paragraphs "First" to "Tenth," which are herein referred to and made a part of this Assignment of Errors.

Thirteenth. The Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department erred in affirming the order of the Supreme Court of the State of New York at Special Term which dismissed the writ of Habeas Corpus bearing date October 1st, 1924, granted on behalf of the petitioner, also designated plaintiff-in-error, to inquire into the cause of his imprisonment and detention and in not releasing the petitioner from such imprisonment and detention.

Fourteenth. The Supreme Court of the State of New York in and for the County of Erie at Special Term erred in dismissing the writ of Habeas Corpus bearing date October 1st, 1924 granted on behalf of the petitioner, also designated as plaintiff-in-error to inquire into the cause of his [fol. 95] imprisonment and detention and in not releasing the petitioner from such imprisonment and detention.

Fifteenth. The Court of Appeals of the State of New York, the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department and the Supreme Court of the State of New York at Special Term in and for Erie County each and every erred in not holding, ruling and deciding that each of the sections 53, 54, 55 and 56 of Article 5-A of the Civil Rights Law of the State of New York, enacted by Chapter 664 of the New

York Laws of 1923, was repugnant to and in violation of the following provisions of Section 1 of Article 14 of the Amendments of the Constitution of the United States which read as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws," and that the petitioner herein, also designated as plaintiff-in-error, was unlawfully restrained of his liberty in violation of said provisions of Section 1 of Article 14 of the Amendments of the Constitution of the United States, as stated in the petition granted on his behalf by the Supreme Court of the State of New York on the 1st day of October, 1924, wherein the petitioner alleged that his said imprisonment and restraint were illegal in this, to wit: "That the Magistrate was without jurisdiction to issue the warrant, or cause his arrest, inasmuch as chapter 664 of the Laws of 1923, is unconstitutional and void and of no force or effect" and all of said courts erred in holding in this case to the contrary.

Grass & Grass, Attorneys for Petitioner, Plaintiff-in Error, 351-3 Ellicott Square, Buffalo, New York.
William Francis Zumbrunn, of Counsel.

Dated March 15th, 1926.

[fol. 96] In Supreme Court of New York

Prayer for Reversal

To the Honorable the Supreme Court of the United States:

And now comes George C. Bryant, the plaintiff in Error, and prays for the reversal of the order or judgment of the Court of Appeals of the State of New York in the following entitled action, People of the State of New York, ex rel., George C. Bryant vs. Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, which order or judgment was entered in the office of the Clerk of the Court of Appeals on the 12th day of January, 1926, unanimously affirming the order or

judgment of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department and which said order or judgment of the Court of Appeals with the entire record in said case was remitted to the Supreme Court of the State of New York in and for Erie County, New York, to be proceeded with according to law and the said George C. Bryant, petitioner and plaintiff in error, also prays for reversal of the said order or judgment of affirmance in said action of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department entered in the office of the Clerk of said Appellate Division on or about the 22nd day of May, 1925, affirming by divided court the order or judgment of the Supreme Court in said action and the said George C. Bryant, petitioner and plaintiff in error, also prays for reversal of the order or judgment in said action of the Supreme Court of the State of New York in and for Erie County, New York, entered in the office of the Clerk of the County of Erie on the 15th day of January, 1926, which latter order was made and entered in pursuance of the remittitur in said action of the Court of Appeals of the State of New York, which last mentioned order or judgment is the judgment of the Court of Appeals, the highest court of the State of New York.

Dated March 15th, 1926.

[fols. 97 & 97½] Grass & Grass, Attorneys for George C. Bryant, Plaintiff in Error, 351-3 Ellicott Square, Buffalo, New York. William Francis Zumbrunn, of Counsel.

[fols. 98 & 98½] In Supreme Court of New York

[Title omitted]

Order Allowing Writ of Error—March 24, 1926

The above entitled matter coming on to be heard upon the petition of George C. Bryant, the relator and petitioner therein for a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of New York in and for Erie County, to which court the record

in this case was remitted by the Court of Appeals, the highest court of the State of New York, and which Supreme Court of the State of New York in and for Erie County and the clerk thereof now have the record in said case and upon examination of said petition and the certified record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a Writ of Error be, and is hereby, allowed to the Supreme Court of the State of New York in and for Erie County and to the clerk of such court from the Supreme Court of the United States and the bond presented by said petitioner be, and the same is hereby, approved.

Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York.

Dated March 24, 1926.

[fol. 99] IN SUPREME COURT OF NEW YORK

WRIT OF ERROR

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of New York in and for Erie County, New York, and to the County Clerk of Erie County, New York, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea, which is in said Supreme Court of the State of New York in and for Erie County on a remittitur from the Court of Appeals of the State of New York, before you or some one of you, being the highest court of law and equity of said state in which a decision could be had in said action entitled the People of the State of New York ex rel. George C. Bryant, relator-appellant, also named herein as plaintiff in error, vs. Charles F. Zimmerman, Chief of Police of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, defendants-respondents, also named herein as defendants in error, wherein was drawn in question the validity of a treaty or statute of or

an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under said state on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of their validity, or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said George C. Bryant as is said and by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and [fols. 100 & 100½] full and speedy justice done to the party aforesaid in this behalf do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, to be there and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 24th day of March in the year of our Lord one thousand nine hundred and twenty-six.

William R. Stansbury, Clerk of the Supreme Court of the United States.

The above Writ is allowed by Frank H. Hiscock, Chief Judge of the New York Court of Appeals.

[fols. 101-102½] Citation in usual form, showing service on Guy B. Moore and Albert Ottinger, omitted in printing.

[fols. 103-105½] Bond on writ of error for $500.00 approved; omitted in printing.

[fol. 106] In Supreme Court of New York

[Title omitted]

Præcipe for Transcript of Record

To Arthur R. Atkinson, County Clerk of Erie County, in the State of New York:

Please take notice that you are hereby notified to incorporate in the transcript of the return to be made to the mandate of the Writ of Errors from the Supreme Court of the United States to the Honorable Justices of the Supreme Court of the State of New York in and for Erie County, New York, and to the County Clerk of the County of Erie, New York, the printed Record on Appeal in the above entitled action, the remittitur, the opinion of Judge Pound of the Court of Appeals of the State of New York, the affidavit of Eugene E. Grass, the judgment of the Supreme Court of the State of New York in and for Erie County, New York, the petition for Writ of Error, the assignment of errors, the prayer for reversal, the order allowing the Writ of Error, the Writ of Error, a copy of the bond approved on the granting of the Writ of Error, the citation to the defendants in error, the certificate of lodgment of the County Clerk of Erie County, New York, the stipulations of the attorneys for the respective parties in the above entitled action, the certificate of the County Clerk of the County of Erie, New York, the waiver of service of the printed record in the above entitled action, the admission of service, the return to the Writ of Error, letter of transmittal of record of the County Clerk of Erie County, and [fol. 107] any and all other papers, documents or proceedings on file in the above entitled action subsequent to the filing of the remittitur from the Court of Appeals in the office of the Clerk of Erie County, New York, on the 15th

day of January, 1926, of all of which you will take due notice.

Grass & Grass, Attorneys for Plaintiff in Error. Office and P. O. Address: 351-353 Ellicott Square, Buffalo, New York. William Francis Zumbrunn, of Counsel.

Dated Buffalo, New York, March 31st, 1926.

Due notice of the service of a copy of the within Præcipe or notice is hereby admitted this 31 day of March, 1926.

Guy B. Moore, District Attorney for Erie County, Attorney for Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, Deputy Sheriff Wahl, Defendants in Error. Albert Ottinger, J. H. C., Attorney General of the State of New York, Attorney for the People of the State of New York, Defendants in Error.

[fols. 108-118½] Certificate of lodgment, with copies of opinion and affidavit, omitted in printing.

[fol. 119] In Supreme Court of New York

[Title omitted]

Stipulation re Transcript of Record

Whereas in the transcript of the record as made up by the County Clerk of Erie County of the State of New York in the above entitled case containing certain documents which appear to be included in the return,

Therefore it is stipulated by and between the parties hereto through their respective attorneys, that the Clerk of the Supreme Court of the United States in printing said record may omit therefrom the whole or part of the following documents or copies thereof appearing in said record, to wit:

1. Affidavits of service of any of the documents contained in said record as well as the title of said case where the same appears in duplicate.

2. The copy of the bond on said Writ of Error.

3. Such other papers or parts of said record as appear in duplicate or may not be necessary for the consideration of the Supreme Court of the United States in the disposition of said case, provided, however, that nothing be omitted affecting the jurisdiction of said Supreme Court of the United States and provided further that all papers necessary to raise the federal question involved be attached to, printed and added to the printed record of said case as used in the Court of Appeals of the State of New York.

Dated March 31st 1926.

Grass & Grass, Attorneys for the Relator George C. Bryant, Plaintiff in Error. William Francis Zumbrunn, of Counsel. Guy B. Moore, District [fols. 120 & 120½] Attorney of Erie County and Attorney for Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, Deputy Sheriff Wahl, Defendants in Error. Albert Ottinger, J. H. C., Attorney General of the State of New York and Attorney for the People of the State of New York.

[fol. 121] In Supreme Court of New York

[Title omitted]

Stipulation re Transcript of Record

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the record herein including cover, transcript of rule 234 printed on the cover, the index and pages from one to sixty of such record, containing all the pleadings, papers and documents in this action used in the Court of Appeals, and the copy of the opinion of Judge Pound of the Court of Appeals, the copy of the affiidavit of Eugene E. Grass, the remittitur from the Court of Appeals and the Judgment of the Supreme Court of the State of New York in and for Erie County and the petition for Writ of Error, the assignment of errors,

the prayer for reversal, the order allowing the Writ of Error, the Writ of Error, the copy of the Bond on Writ of Error, the citation on Writ of Error, the certificate of lodgment, may be certified by the County Clerk of Erie County in the State of New York as the complete return herein which shall constitute full compliance with the requirements of the Writ of Error from the Supreme Court of the United States to the Honorable Justices of the Supreme Court of the State of New York in and for Erie County and to the County Clerk of Erie County, New York.

Dated Buffalo, New York, March 31st, 1926.

Grass & Grass, Attorneys for George C. Bryant, Plaintiff in Error. William Francis Zumbrunn, [fols. 122 & 122½] of Counsel. Guy B. Moore, District Attorney of Erie County, New York, and Attorney for Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, Deputy Sheriff Wahl, Defendants in Error. Albert Ottinger, J. H. C., Attorney General of the State of New York and Attorney for the People of the State of New York, Defendants in Error.

[fol. 123] In Supreme Court of New York

[Title omitted]

Waiver of Service

The undersigned District Attorney of Erie County and attorney for Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, Defendants in Error in the above entitled action and the undersigned Attorney General of the State of New York, attorney for the People of the State of New York, also Defendants in Error, having heretofore been served with a full and complete printed record used upon the hearing of said case in the Court of Appeals of the State of New York and having heretofore received a copy of the remittitur from the Court of Appeals of the State of New York to the Supreme Court of the State of New

York in and for Erie County in the case of The People of the State of New York ex rel. George C. Bryant, Relator-Appellant vs. Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, Defendants-Respondents and Defendants in Error herein, and having entered the judgment of affirmance in said case in the Clerk's Office of the County of Erie in the State of New York upon said remittitur and having heretofore been served with a copy thereof and of the assignment of errors on the application of said George C. Bryant for Writ of Error from the Supreme Court of the [fol. 124] United States to the Supreme Court of the State of New York in and for Erie County made by the said George C. Bryant, Plaintiff in Error, and having also been served with a copy of the petition of said Plaintiff in Error for said Writ of Error and also having been served with a copy of the prayer for reversal of the Plaintiff in Error and having also been served with a copy of the order of the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York allowing said Writ of Error and having also been served with a copy of said Writ of Error and a copy of the bond approved by said Chief Judge accompanying said Writ of Error and having also been served with a citation to said Defendants in Error made by said Chief Judge of the Court of Appeals of the State of New York, all of which were served on the 31st day of March, 1926,

Now therefore, the undersigned Guy B. Moore, District Attorney of Erie County, New York, and attorney for the said Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, and Albert Ottinger, Attorney General of the State of New York, attorney for the People of the State of New York, do hereby waive service on them respectively as District Attorney of Erie County and attorney for Defendants in Error and Attorney General and attorney for the People of the State of New York of copies of the printed record in said case used in the Court of Appeals of the State of New York forming the record in the above entitled action in the Supreme Court of the United States, which is to be made up by the Clerk of the Supreme Court of the United States from the printed record in this case used in the

Court of Appeals of the State of New York and from the several papers hereinbefore mentioned, with all of which the undersigned has been duly served and has in his possession for use in preparing their respective briefs for and on the argument of the above entitled case in the Supreme Court of the United States.

Dated Buffalo, N. Y., March 31st, 1926.

[fol. 125] Guy B. Moore, District Attorney of Erie County, Attorney for Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, Deputy Sheriff Wahl, Defendants in Error. Albert Ottinger, J. H. C., Attorney General of the State of New York, Attorney for the People of the State of New York, Defendants in Error.

[fol. 125½] [Endorsed:] State of New York, County of Erie. Supreme Court. The People of the State of New York, ex rel., George C. Bryant, Relator-Appellant, against Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York, Frank W. Tyler, Deputy Sheriff Wahl, Defendants-Respondents. Original. Waiver. Grass & Grass, Attorneys for Plaintiff in Error. Office and Post Office Address: 351-353 Ellicott Square, Buffalo, N. Y. William Francis Zumbrunn, of Counsel.

[fol. 126] In the Supreme Court of the United States

Statement of Points to be Relied upon and Designation by Plaintiff in Error to Print the Entire Record—Filed April 16, 1926

Comes now the plaintiff in error and makes the following statement of points on which he intends to rely, and designates the particulars in which he contends the Court of Appeals of the State of New York committed error as follows, to wit:

1. The Court of Appeals of the State of New York erred in affirming the order of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department in

this case, which order affirmed the decision of the Supreme Court of the State of New York at special term by which latter court petitioner's writ of habeas corpus was dismissed and petitioner was not released from imprisonment and was restrained of his liberty contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The Court of Appeals of the State of New York erred in holding, ruling and deciding that Section 56 of Article 5A of the Civil Rights Law of New York and other provisions of Chapter 664 of the New York Laws of 1923 were not in conflict with section one of the 14th Amendment to the Constitution of the United States.

Plaintiff in error further contends that Section 56 of Article 5A of the Civil Rights Law of New York, and the other provisions of Chapter 664 of the New York Laws of 1923 were and are unconstitutional and void, as being in contravention of Section one of the 14th Amendment to the Constitution of the United States in this, to wit:

[fol. 127] 1. That said Chapter 664 of the New York Laws of 1923 is unconstitutional and void as undertaking to abridge the privileges and immunities of citizens of the United States.

2. That said Chapter 664 of the New York Laws of 1923 is unconstitutional and void, as it deprives the petitioner of life, liberty or property without due process of law.

3. That said Chapter 664 of the New York Laws of 1923 is unconstitutional and void as it denies to petitioner within its jurisdiction the equal protection of the laws to which he is entitled thereunder.

4. That said Chapter 664 of the New York State Laws of 1923 deprives the petitioner of his rights, privileges and immunities guaranteed to citizens of the United States and the State of New York by Section 1 of the 14th Amendment to the Constitution of the United States.

5. That said Chapter 664 of the laws of the State of New York for 1923 is unconstitutional and void as depriving petitioner of his liberty without due process of law.

6. That said Section 56 of Article 5A of the Civil Rights Law of New York and other provisions of Chapter 664 of the New York laws of 1923, are all unconstitutional and void as being in contravention of Section 1 of the 14th Amendment to the Constitution of the United States, which reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Clerk is hereby directed to print the entire record as certified to this Court by the County Clerk of the County of Erie, State of New York.

Respectfully submitted.

William F. Zumbrunn, John H. Connaughton, W. B. Brown, Attorneys for Plaintiff in Error. B. H. Sullivan.

[fols. 128-129] City of Washington,
District of Columbia, ss:

John H. Connaughton of lawful age, being by me first duly sworn upon his oath, deposes and says, that he is one of the attorneys of record for the plaintiff in error, in the case of People of the State of New York, Ex Rel. George C. Bryant, Plaintiff in Error Vs. Charles F. Zimmerman, Chief of Police of the City of Buffalo, New York; Frank W. Tyler, and Deputy Sheriff Wahl, Defendants in Error, pending in the Supreme Court of the United States.

That he did on the 15th day of April, 1926, enclose in a stamped envelope, postage paid, a true copy of the attached instrument designated as Statement of Points and Designation for Printing Record, by Plaintiff in Error, addressed

to Hon. Guy B. Moore, District Attorney of Erie County, Buffalo, New York, and deposited the same in the Postoffice.

John H. Connaughton.

Subscribed and sworn to before me this 15th day of April, 1926. M. P. Zumbrunn, Notary Public. My Commission expires Oct. 10, 1930. (Seal.)

[fol. 130] [File endorsement omitted]

Endorsed on cover: File No. 31,824. New York Supreme Court. Term No. 332. The People of the State of New York ex rel. George C. Bryant, plaintiff in error, vs. Charles F. Zimmerman, Chief of Police of Buffalo, New York; Frank W. Tyler, and Deputy Sheriff Wahl. Filed April 7th, 1926. File No. 31,824.

SUPREME COURT OF THE UNITED STATES.

OCTOBER, TERM 1908.

No. [redacted] 43 2.

THE PEOPLE OF THE STATE OF NEW YORK, ex Rel. GEORGE W. BRYANT, Plaintiff in Error,

vs.

CHARLES F. ZIMMERMAN, Chief of Police of the City of Buffalo, N. Y., FRANK W. TYLER, Deputy Sheriff WAHL, Defendants in Error.

IN ERROR FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF OF PLAINTIFF IN ERROR.

WILLIAM T. ZIMMERMAN,
JOHN H. GODDARD STOW,
WILLIAM A. [redacted],
Attorneys for Plaintiff in Error.

(21,834)

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SUPREME COURT OF THE UNITED STATES

OCTOBER, TERM 1926.

No. 332.

PEOPLE OF THE STATE OF NEW YORK ex Rel. GEORGE W. BRYANT, Plaintiff in Error,

vs.

CHARLES F. ZIMMERMAN, etc., et al., Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

Statement.

I.

This is an action in *habeas corpus* brought by relator in the Supreme Court of Erie County, New York, to secure his discharge from arrest for a pretended violation of the Walker Law, being chapter 664, Laws 1923 of New York, or better known as sections 53, 54, 55, and 56 of article 5A of the Civil Rights Law. The Law is set out in full on page 3 of this brief. It was

contended by the relator in the Supreme Court of Erie County, New York, and in the appellate division and the Court of Appeals of said State that this law was and is unconstitutional, null and void, and in contravention of section 1 of the 14th Amendment to the Constitution of the United States as depriving the relator of life, liberty and property without due process of law, and denying him the equal protection of the law guaranteed thereby.

The case is reported as

People *ex rel. vs.* Zimmerman, 210 N. Y. S., 269; 213 App. Div., 414.

The judgment of the Supreme Court of Erie County, New York, dismissing the writ of *habeas corpus* was rendered November 7, 1924, as shown at R., 12.

The case was then appealed to the appellate division of the Supreme Court, Fourth Department, where judgment affirming decision of the Supreme Court of Erie County was rendered May 22, 1925 (R., 18).

From this decision of the appellate division of the Supreme Court the case was taken to the Court of Appeals of New York, which court affirmed the decision of the appellate division, affirming the order of the Supreme Court of Erie County, New York, dismissing the writ of *habeas corpus* January 12, 1926 (R., 42). This case is reported as

People *ex rel. vs.* Zimmerman, 241 N. Y., 405-13; 150 N. E., 497.

II.

The right of review in this Court is claimed under and by virtue of Sec. 1214, U. S. Comp. Stat., 1916 as supplemented by Act 1925, supported by following cases:

Com. *vs.* Griffith, 14 Pet., 56; 10 L. Ed., 352.

Foster *vs.* Kansas, 5 S. C., 97; 112 U. S., 201; 28 L. Ed., 629.

Kenney *vs.* Loyal Order of Moose, 40 S. C., 371; 252 U. S., 411; 64 L. Ed., 638.

III.

As before stated, this is an action in *habeas corpus* brought by the relator in the Supreme Court of Erie County, New York, sitting at Buffalo, to secure his release from an arrest for a violation of what is known as the Walker Law. This is chapter 664 of the Laws of 1923 of the Laws of New York, and is sections 53, 54, 55, and 56 of article 5A of the Civil Rights Law, and reads as follows:

> "S. 53. COPIES OF DOCUMENTS AND STATEMENTS TO BE FILED.—Every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders law, within thirty days after this article takes effect, and every such corporation or as-

sociation hereafter organized, within ten days after the adoption thereof, shall file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year. Every such corporation and association shall, in case its constitution, by-laws, rules, regulations or oath of membership or any part thereof, be revised, changed or amended, within ten days after such revision or amendment file with the Secretary of State a sworn copy of such revised, changed or amended constitution, by-law, rule, regulation or oath of membership. Every such corporation or association shall within thirty days after a change has been made in its officers file with the Secretary of State a sworn statement showing such change. Every such corporation or association shall at intervals of six months file with the Secretary of State a sworn statement showing the names and addresses of such additional members as have been received in such corporation or association during such interval.

New, added by L. 1923, ch. 664, in effect May 23, 1923.

"S. 54. Resolutions Concerning Political Matters.—Every such corporation or association shall, within ten days after the adoption thereof, file in the office of the Secretary of State every resolution, or the minutes of any action of such corporation or association, providing for concerted action of its members or a part thereof to promote or defeat legislation, Fed-

eral, State or municipal, or to support or to defeat any candidate for political office.

New, added by L. 1923, ch. 664, in effect May 23, 1923.

"S. 55. Anonymous Communications Prohibited.—It shall be unlawful for any such corporation or association to send, deliver, mail or transmit to any person in this State who is not a member of such corporation or association any anonymous letter, document, leaflet or other written or printed matter, and all such letters, documents, leaflets or other written or printed matter, intended for a person not a member of such corporation or association, shall bear on the same the name of such corporation or association and the names of the officers thereof together with the addresses of the latter.

New, added by L. 1923, ch. 664, in effect May 23, 1923.

"S. 56. Offences, Penalties.—Any corporation or association violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than ten thousand dollars. Any officer of such corporation or association and every member of the board of directors, trustees or other similar bodies, who violates any provision of this article or permits or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. Any person who becomes a member of any such corporation or association, or remains a member thereof, or attends a meeting thereof, with knowledge that such corporation or association has failed to comply

with any provision of this article, shall be guilty of misdemeanor.

New, added by L. 1923, ch. 664, in effect May 23, 1923.

The relator was arrested on the first day of October, 1924, for alleged violation of chapter 664 of the Laws of 1923, above set out in full. The information upon which his arrest was based alleged, among other things, that there was at Buffalo an organization known as the Buffalo Provisional Klan of the Knights of the Klu Klux Klan, having a membership of more than 20 persons, falling within the classification set out in the law, and that no one in its behalf had ever filed with the Secretary of State of New York a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, and a roster of its membership, etc., as required by the law. That the relator was a member of this institution and had met with it at various times between the 22d day of May, 1923, and the 31st day of August, 1924, when it had failed to comply with the law (R., 8 & 9).

The petition for the writ of *habeas corpus* alleged, among other things, that the magistrate issuing the warrant was without jurisdiction because of the fact that the above-quoted law was unconstitutional and void and of no force and effect.

This case was tried in the Supreme Court of New York, sitting in and for Erie County, and the writ of *habeas corpus* dismissed. An appeal was taken from this final judgment to the appellate division, fourth department, of said Supreme Court, and on the 22d

day of May, 1925, said court affirmed the decision of the Supreme Court of Erie County, and the opinion of the court is reported at N. Y. S., — (R., 18).

From this decision of the appellate division of the fourth department of the Supreme Court of New York an appeal was taken to the Court of Appeals, which last-named court affirmed the decisions of the Supreme Court and appellate division (R., 3). This case was reported at

241 N. Y., 405-413; 150 N. E., 497.

From that decision of the Court of Appeals of the State of New York the relator prosecuted error. The relator attacked this law in all of said courts as being unconstitutional, null and void, and in contravention of section 1 of the 14th Amendment to the Constitution of the United States, and the sole question to be decided by this Court is whether or not this law is in contravention of section 1 of the 14th Amendment to the Constitution of the United States, which reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Assignments of Error.

While the plaintiff in error out of an abundance of caution made a large number of assignments of error, they may be summarized in the following assignments:

I.

The Court of Appeals of the State of New York erred in affirming the order of the appellate division of the Supreme Court in and for the fourth judicial Department in this case, which order affirmed the decision of the Supreme Court of the State of New York sitting in and for Erie County at special term, by which latter court petitioner's writ of *habeas corpus* was dismissed, and petitioner was not released from imprisonment and was restrained of his liberty contrary to the provisions of section 1 of the 14th Amendment to the Constitution of the United States.

II.

The Court of Appeals of the State of New York erred in holding, ruling and deciding that sections 53, 54, 55, and 56 of article 5A of the Civil Rights Law of New York and other provisions of chapter 664 of the New York Laws of 1923 were not in conflict with section 1 of the 14th Amendment to the Constitution of the United States.

ARGUMENT.

The argument in this case may well be divided into two parts: the sections above referred to, being chapter 664 of the Laws of 1923 of the State of New York, known as sections 53, 54, 55, and 56 of article 5A of the Civil Rights Law, are in contravention of section 1 of the 14th Amendment to the Constitution of the United States for the following reasons:

I.

Said law is void as undertaking to abridge the privileges and immunities of citizens of the United States, and deprives the petitioner of life, liberty and property without due process of law.

II.

That it denies to the petitioner within its jurisdiction equal protection of the laws to which he is entitled thereunder.

Purpose of the Fourteenth Amendment.

It might be profitable for us to discuss briefly the purpose of the 14th Amendment to the Constitution of the United States and to what applicable before proceeding with the arguments upon the constitutionality of the law in question. The prohibitions of this section have reference to State action exclusively, and were designed to prohibit the States from unjustly

interfering with the rights and privileges of citizens of the United States.

Virginia *vs.* River, 100 U. S., 318.

Hodges *vs.* U. S., 203 U. S., 1.

In the case of Hodges *vs.* U. S., 203 U. S., 1; 27 S. C., 6, the court uses the following language at page 15:

> "Under the 14th Amendment it has power to counteract and render nugatory all State laws and proceedings which have the effect to abridge any of the privileges or immunities of citizens of the United States, or to deprive them of life, liberty or property without due process of law, or to deny to any of them the equal protection of the laws."

The 14th Amendment was intended to preserve the rights, privileges and immunities of all citizens of the United States from any unequal, unjust legislation of the States.

N. C. *vs.* Vanderford, 35 Fed., 282, 283.

Douglas Park Jockey Club *vs.* Grainger, 146 Fed., 414.

Sunday Lake Iron Co. *vs.* Wakefield Tp., 237 U. S., 350; 38 S. C., 495; 62 L. Ed., 1154.

Jones *vs.* Buffalo Creek Coal & Coke Co., 245 U. S., 328; 62 L. Ed., 325.

Truax *vs.* Corrigan, 257 U. S., 312; 42 S. C., 124; 66 L. Ed., 254.

These cases might be supplemented indefinitely, but we consider the proposition too elemental to require further citations.

The provision that no State shall deny to any person within its jurisdiction the equal protection of the law, is directly aimed at discriminatory legislation and its object is to secure equality and generality in State statutes.

U. S. *vs.* Billings, 190 Fed., 359.

Risley *vs.* City of Utica, 173 Fed., 502.

The protection of the 14th Amendment extends as well to corporations as to individuals, and they cannot be deprived of any of the rights mentioned therein, except in the manner that individuals may.

A corporation is a person within the meaning of the equality clauses of the 14th Amendment to the Constitution of the United States.

Covington, etc., Company *vs.* Sandford, 174 U. S., 578; 17 S. C., 198; 41 L. Ed., 560.

Cumberland Gas Light Co. *vs.* W. Va. Gas Co., 188 Fed., 585.

Lescraft *vs.* Texas Co., 281 Fed., 918.

Corporations are within the 14th Amendment to the Federal Constitution, so that subject to a legitimate exercise of the police power, no State can deny them the full protection of the laws.

Wilmington City Railway Co. *vs.* Taylor, 198 Fed., 159.

Kentucky Finance Corporation *vs.* Paramount Auto Exchange Co., 262 U. S., 544; 43 S. C., 636; 67 L. Ed., 1112.

This protection has also been extended to benevolent, religious, fraternal, and educational corporations. In the case of the Society of Jesus & Mary *vs.* Pierce, 296 Fed., 928, the court used the following language in syllabus one:

> "Though civil, religious and educational corporations are not possessed of the rights of citizens under the privileges 'and immunities' clause of the constitutional amendment fourteen, they cannot be deprived of their property without due process of law, nor be denied the equal protection of the laws."

This last-named case was affirmed by the Supreme Court of the United States, and the doctrines herein set out approved.

> Pierce *vs.* Society, etc., 268 U. S., 510; 45 S. C., 571.

We therefore believe that it has been definitely decided that Amendment Fourteen to the Constitution of the United States deals with State legislation, and that the rights of both corporations and individuals are protected thereby.

Chapter 664.

Chapter 664, Laws of New York, 1923, being sections 53, 54, 55 and 56 of article 5A of the Civil Rights Law, is in contravention of the 14th Amendment to the Constitution of the United States, in that it deprives the petitioner and others of life, liberty and property without due process of law.

It might be profitable at this time to analyze the statute in question in order that we may properly apply the provision of the 14th Amendment to the Constitution in making our test. The law has a two-fold purpose. First, section 53 requires every existing membership corporation and every existing unincorporated association having a membership of twenty or more persons which requires an oath as a prerequisite of membership, *except labor unions or benevolent orders mentioned in the Benevolent Orders Law*, within thirty days after the article takes effect, and every one hereafter organized, within ten days to file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of officers for the current year. It further provides for the filing of amendments and supplemental lists and changes of list of officers.

It will be observed that the duty herein imposed is one directed to the officers or those in charge of associations or corporations coming under the provisions of the law, although it does not mention or describe the officer or officers upon whom the duty is enjoined to file the things required by this section.

Section 54 concerns resolutions of a political nature, and when read in the light of present-day activities of fraternal organizations of any standing, is the biggest joke that was ever perpetrated upon the American people. It is not uncommon for fraternal insurance corporations such as the Yeomen, Woodman and others to pass resolutions concerning legislation and

to designate by this method the different candidates whom they propose to support.

Section 55 makes it unlawful for any such corporation to send, deliver, mail or transmit to any person in the State who is not a member any anonymous letter, document, etc., and provides that any such communication shall bear on the same the name of the corporation and its officers. The necessity for commenting upon such an unreasonable provision of law is unnecessary. If the document bore upon its face the name of the corporation and the officers thereof, it would not be an anonymous communication. The legislator has said that if the corporation sends out an anonymous communication it must sign the same, and when viewed in that sense the section becomes a mockery. If the legislator felt that anonymous communications should be prohibited, they could easily have forbidden the use of the mails for the transmission of such communications. We call the attention of the court to this particular section to show how unfair and unreasonable the legislature of the State of New York was in dealing with this matter, and to show that they had no regard at all for the rights of individuals and did not have in mind any wrong to be remedied.

Section 56 is the most malicious one of the entire lot. After providing that the corporation or association violating the provisions of the article shall be guilty of a misdemeanor and fined not less than one thousand dollars nor more than ten thousand dollars, it further provides that any officer shall also be guilty of a mis-

demeanor, and then in the closing sentence of the paragraph makes it a misdemeanor for a person to become a member of such association, or remain a member, or attend a meeting thereof with knowledge that the corporation has failed to comply with any provision of this article. The effect of this last sentence is to make a person guilty of a misdemeanor who remains a member or attends a meeting, when the officers of the corporation have failed to file a list of members, a copy of the constitution, etc. That is to say, the effect of this sentence is to make the individual guilty of a misdemeanor and subject to a fine and jail sentence because of the failure of someone else to perform the duties enjoined by section 53 of this law.

To illustrate this, and use the present case as an illustration, relator George C. Bryant is charged with remaining a member and attending meetings of the Klan when some officer of the Klan had failed to comply with section 53. It is not charged that the relator is guilty of a single affirmative wrong. If some of the officers of the Klan had complied with the provisions of section 53 the relator would be guilty of no wrong in doing the very things that he is charged with doing in the information filed in this case (R., 8). Thus relator is deprived of his liberty because of the failure of some other person to comply with the provisions of section 53.

In this connection we would say that the provisions of section 53, as well as section 56 and all other portions of this law, are in contravention of the 14th Amendment to the Constitution of the United States,

for the reason that it deprives the relator and other persons of life, liberty and property without due process of law.

I.

This Law Deprives the Relator and other persons of Life, Liberty, and Property Without Due Process of Law.

The Supreme Court of the United States has, upon various occasions, commented upon the liberty of the individual, which is protected by this amendment to the Constitution of the United States. It has said in substance that this liberty includes not only the right of the individual to be free from bodily restraint, to contract freely, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, and to worship God according to the dictates of his own conscience, but it also includes the right to engage in social pleasure, to form harmless associations, to organize secret societies that do not teach principles inimical to the Government of the United States or that of the several States, and in general to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. An individual may not be deprived of any of the common rights of mankind by the legislatures of the several States except in the interest of health, morals, safety or the general welfare of the State or the individual therein. The legislature may not deprive an individual of liberty of action, merely to satisfy the whims of its mem-

bers, or the unreasonable demands of any portion of the inhabitants of the State. When the liberty of the individual is transgressed, it must be to promote the general welfare of the whole, promote its health, morals or safety, and legislation which transgresses the liberty of the individual without some of these objects in view, violates this section of the Constitution. The liberty of the individual is only circumscribed where it conflicts with the interest of the public generally. So long as no question of public welfare, health, morals or safety is concerned, the individual is free to act according to the dictates of his own conscience. It is only when his activities encroach upon the rights of others that he must surrender his desires.

In the case of Meyer *vs.* State of Nebraska, 262 U. S., 390; 43 S. C., 625, at 626, the court comments upon this principle quite fully as follows:

> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.
>
> "The established doctrine is that this liberty may not be interfered with, under the guise of

> protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the legislature of which constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. Lawton v. Steele, 152 U. S., 133, 137; 14 Sup. Ct., 499; 38 L. Ed., 385."

In the Slaughter House cases, 16 Wall., 36, at 79; 21 L. Ed., 394, the court enumerates a large number of things that are protected by the 14th Amendment to the Constitution of the United States.

In the case of Adams vs. Tanner, 244 U. S., 590; 37 S. C., 662, the court, in declaring unconstitutional a law which made it criminal to demand or receive, either directly or indirectly, from any person seeking employment, etc., a fee for such services, commented upon the right of the legislature of the several States to curb the liberty of the individual. Reference is made to the case of Allgeyer vs. Louisiana, 165 U. S., 578; 17 S. C., 427; 41 L. Ed., 832, from which the following quotation is taken:

> "The liberty mentioned in that Amendment means not only the right of the citizens to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood

> or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

Also to the case of Booth *vs.* Illinois, 184 U. S., 425; 22 S. C., 425; 46 L. Ed., 623:

> "If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law." Booth *v.* Illinois, 184 U. S., 425, 429; 46 L. Ed., 623, 626; 22 Sup. Ct. Rep., 425.

In a very recent case the Supreme Court had before it the Oregon School Law, which was attacked as contravening section one of the 14th Amendment to the Constitution of the United States. In holding this law unconstitutional in the case of Pierce *vs.* Society of the Sisters of the Holy Name, etc., 268 U. S., 510; 45 S. C. 571, at 573, the court uses the following language:

> "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers

shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

"The inevitable practical result of enforcing the act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students, or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

"Under the doctrine of Meyer v. Nebraska, 262 U. S., 390; 43 S. Ct., 625; 67 L. Ed., 1042; 29 A. L. R., 1146, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the

> State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

This last mentioned case affirmed the decision of the United States District Court for the District of Oregon, presided over by three judges assembled pursuant to law, and is reported at 296 Fed., 928. In discussing this principle of law this Court made the following observation at page 935 of the opinion:

> "It is not denied that the State, in its sovereign capacity, is entitled to the exercise of what are termed police powers. What these powers are the courts have not attempted to define precisely. But, without question, they relate to the safety, health, morals, and general welfare of the public. 'Both property and liberty,' says the court, in Lochner v. New York, 198 U. S., 45, 53; 25 Sup. Ct., 539, 541 (49 L. Ed., 937; 3 Ann. Cas., 1133), 'are held on such reasonable conditions as may be imposed by the governing power of the State in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere.'
>
> "But there is a limit to the manner in which these powers may be exercised by the State. They cannot be exercised arbitrarily and despotically, nor unless there exists a reasonable relation between the character of the legislation and the policy to be subserved. Nor is the State legislature the final judge of the limitations of the police power. Its enactments will be set aside when found to be unwarranted and

arbitrary interference with rights protected by the Constitution in carrying on a lawful business or occupation in the use and enjoyment of property. In other words, the exercise of the police power is subject to judicial review, and property rights cannot be ruthlessly destroyed by wrongful enactment. Silz v. Hesterberg, 211 U. S., 31, 39; 29 Sup. Ct., 10; 53 L. Ed., 75; Lawton v. Steele, 152 U. S., 133, 137; 14 Sup. Ct., 499; 38 L. Ed., 385; Dobbins v. Los Angeles, 195 U. S., 223, 239; 25 Sup. Ct., 18; 49 L. Ed., 169.

"In elaboration of the principle, the courts may not, however, because of the mere fact that they differ from the legislature in its views of public policy, or hold views inconsistent with the propriety of the legislation in question, interfere judicially, nor unless the act in question is unmistakably and palpably in excess of legislative power. McLean v. Arkansas, 211 U. S., 539, 547; 29 Sup. Ct., 206; 53 L. Ed. 315.

"There are certain known callings and occupations that the State may, under and in pursuance of its police powers, regulate by reasonable interposition; but it cannot prohibit their exercise, where to do so will infringe the guaranties of the Fourteenth Amendment. Thus employment agencies may be regulated, but not prohibited. Adams v. Tanner, 244 U. S., 590; 37 Sup. Ct., 662; 61 L. Ed., 1336; L. R. A. 1917F, 1163; Ann. Cas. 1917D, 973. The right of the individual to work and earn a livelihood may not be prohibited, though the workman be an alien. Truax v. Raich, *supra*.

"The right to contract in relation to one's business is a liberty that may not be inhibited without entrenchment upon rights guaranteed

by the Fourteenth Amendment. Lochner *v.* New York, *supra;* Adkins *et al. v.* Children's Hospital, *supra.* The right to engage in a useful, legitimate business, not harmful or vicious, is protected under the amendment, and cannot be abrogated. Murphy *v.* California, 225 U. S., 623; 32 Sup. Ct., 697; 56 L. Ed., 1229; 41 L. R. A. (N. S.), 153. And the right to teach German along with the grammar school grades may not be impinged upon under the guise of legislative regulation. Meyer *v.* Nebraska, *supra.*"

In the case of Smith *vs.* Texas, 233 U. S., 630; 34 S. C., 681, this Court held unconstitutional a law of the State of Texas, making it a misdemeanor for any person to act as conductor of a passenger railway train in that State without having previously served for two years as a freight conductor or brakeman.

In the case of Railway Co. *vs.* Wisconsin, 238 U. S., 491; 35 S. C., 869, this Court held unconstitutional as violating section one of the 14th Amendment to the Constitution of the United States, a law of the State of Wisconsin prohibiting the letting down of an unengaged or unoccupied upper berth in a sleeping car when the lower berth in the same section is occupied.

In the case of Hume *vs.* Laurel Hill Cemetery, 142 Fed., 552, the Circuit Court of the Northern District of California held unconstitutional an ordinance of the city of San Francisco prohibiting the burial of bodies within the entire county, and in commenting thereon used the following language at page 565 of the opinion:

"While it is true that courts will go far to uphold legislative acts intended for the protection of public health, morals, or safety, even though

> they may be in themselves retroactive and destroy values invested in business or property, yet it is certainly carrying the exercise of the police powers to the extreme constitutional limit, where such business, or the use to which such property is put, is intrinsically harmless. In such instances, it should appear to the court that the conditions are such that the interests of the public generally justify such legislation, and that the act itself is reasonable in its scope and practical application. 'The legislature has no power, under the guise of police regulation, to invade arbitrarily the personal rights or liberties of the citizen.' Lawton v. Steele, 152 U. S., 133-137; 14 Sup. Ct., 499, 501; 38 L. Ed., 385; Ruhstrat v. People of State of Illinois, 185 Ill., 133-141; 57 N. E., 41, 44; 49 L. R. A., 181; 76 Am. St. Rep., 30."

The same case also cited and quoted from the case of Mugler vs. Kansas, 123 U. S., 661; 8 S. Ct., 297; 31 L. Ed., 205, which reads as follows:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty, * * * indeed, are under a solemn duty, * * * to look at the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relations to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby to give

effect to the Constitution." Pollock *v.* Farmers' L. & T. Co., 157 U. S., 554; 15 Sup. Ct., 673; 39 L. Ed., 759; Reagan *v.* Farmers L. & T. Co., 154 U. S., 362; 14 Sup. Ct., 1047; 38 L. Ed., 1014; Covington Turnpike Road *v.* Sanford, 164 U. S., 578; 17 Sup. Ct., 198; 41 L. Ed., 560; Yick Wo *v.* Hopkins, 118 U. S., 356; 6 Sup. Ct., 1064; 30 L. Ed., 220; Lochner *v.* State of N. Y. (Case No. 292, Oct. Term, U. S. Sup. Ct., 1904), 25 Sup. Ct., 539; 49 L. Ed., 937; Lawton *v.* Steele, 152 U. S., 133-137; 14 Sup. Ct., 499; 38 L. Ed., 385; Jew Ho *v.* Williamson (C. C.), 103 Fed., 10."

The recent case of Jay Burns Baking Company *vs.* Bryan, 264 U. S., 504; 44 S. C., 412, in declaring unconstitutional a statute of the State of Nebraska prohibiting offering for sale loaves of bread of weights other than one half pound, one pound, a pound and a half, or exact multiples, used the following language:

"Undoubtedly, the police power of the State may be exerted to protect purchasers from imposition by sale of short weight loaves. Schmidinger *v.* Chicago, 226 U. S. 578, 588, 33 Sup. Ct. 182, 57 L. Ed. 364, Ann. Cas. 1914B, 284. Many laws have been passed for that purpose. But a state may not, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them. Lawton *v.* Steele, 152 U. S. 133, 137, 14 Sup. Ct. 499, 38 L. Ed. 385; Meyer *v.* Nebraska, 262 U. S. 390, 399, 43 Sup. Ct. 625, 67 L. Ed. 1042. Constitutional protection having been invoked, it is the duty of the court to deter-

> mine whether the challenged provision has reasonable relation to the protection of purchasers of bread against fraud by short weights and really tends to accomplish the purpose for which it was enacted. Meyer v. Nebraska, *supra*; Welch v. Swasey, 214 U. S. 91, 105, 29 Sup. Ct. 567, 53 L. Ed. 923; Dobbins v. Los Angeles, 195 U. S. 223, 236, 25 Sup. Ct. 18, 49 L. Ed. 169; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 556, 22 Sup. Ct. 431, 46 L. Ed. 679; Lawton v. Steele, *supra*."

In the case of Eubank vs. Richmond, 226 U. S., 137; 33 S. C., 76, the court had under consideration an ordinance of the city of Richmond which required the Committee on Streets upon request of the owners of two-thirds of the abutting propery to establish a building line on the side of the square on which such property abuts not less than five, nor more than thirty feet from the street line. In declaring this ordinance unconstitutional as violating the 14th Amendment to the Constitution of the United States, the court said:

> Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It it not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 50 L. Ed. 596, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175."

In the case of Chicago, Burlington & Quincy Railway Company *vs.* Illinois *ex rel.*, 26 S. C., 341, at page 349, the court in passing upon a drainage statute of the State of Illinois discusses the reasons for which the policy power of the state may be invoked to limit the liberty of the individual, and confines it to public health, morals, public safety and general prosperity, as stated in the following excerpt from the opinion:

> "The learned counsel for the railway company seem to think that the adjudications relating to the police power of the State to protect the public health, the public morals, and the public safety are not applicable in principle, to cases where the police power is exerted for the general well-being of the community apart from any question of the public health, the public morals, or the public safety. Hence, he presses the thought that the petition in this case does not, in words, suggest that the drainage in question has anything to do with the health of the drainage district, but only avers that the system of drainage adopted by the commissioners will reclaim the lands of the district, and make them tillable or fit for cultivation. We cannot assent to the view expressed by counsel. We hold that the police power of the State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety. And the validity of a police regulation, whether established directly by the State or by some public body acting under its sanction, must depend upon the circumstances of each case and

> **the character of the regulation, whether arbitrary or reasonable, and whether really designed to accomplish a legitimate public purpose."**

In the case of Truax *vs.* Raich, 239 U. S., 33; 36 S. C., 7, the court in holding unconstitutional a statute of the State of Arizona prohibiting an employer of labor to have in his employ more than 20 per cent of foreign-born persons, said that such legislation had no relationship to public health, morals, safety or general welfare. In the case of St. Louis Poster Advertising Company *vs.* St. Louis, 249 U. S., 269; 39 S. C., 274, in holding constitutional what is known as a billboard ordinance, forbidding the erection of billboards in certain localities in the city of St. Louis, the court said that billboards might properly be put in a class by themselves and prohibited in the residence districts of the city in the interest of the safety, morality, health and decency of the community.

Some of the most interesting litigation involving the Fourteenth Amendment to the Constitution of the United States has been what is known as "City Zoning Ordinances," and the State legislation authorizing cities to zone the same. When this class of legislation was first adopted, the Supreme Court of the State of Texas held the law unconstitutional, and several other States came to the same conclusion. The difficulty that was experienced by the several supreme courts in the early history of zoning laws and ordinances, was how they could be classified as a legitimate exercise of the police power in promoting public health, safety, comfort or welfare. Thus, in syllabus 7 of

Spann *vs.* Dallas (Texas), 235 S. W., 513, the court said that to deprive a citizen of the use of his property under the pretense of preserving the public health, safety, comfort or welfare, when it is manifest that such was not the real object and purpose, must be condemned by the court. This law was thus held unconstitutional as violating the Fourteenth Amendment to the Constitution of the United States.

In the case of Goldman *vs.* Crowther (Md.), 128 Atl., 50, the court held unconstitutional an ordinance of the city of Baltimore, providing for zoning, because the ordinance had no relationship to public welfare, security, health or morals.

In the case of Miller *vs.* Board of Public Works (Calif.), 234 Pac., 381, the Supreme Court of California held a zoning ordinance of the city of Los Angeles to have been a valid exercise of the police power, but in commenting thereon said that this ordinance had a just relationship to public health, morals, safety and general welfare, and especially was it related to general welfare. In a very exhaustive opinion they sum up the result of judicial determination of zoning ordinances all over the country, and decide that the health in many instances, and the general welfare in practically all instances are sufficient justification for the passage of zoning ordinances of cities. In fact some courts have gone far enough to say that esthetic conditions alone constitute a portion of the general welfare, reasoning to support legislation of this kind. In late years the supreme courts of many States have held zoning ordinances constitutional as being neces-

sary for the promotion of the health and general welfare of the inhabitants of closely populated places like cities.

West *vs.* Wichita, 118 Kan., 265.
Inspector *vs.* Stoklosa (Mass.), 145 N. E., 262.

The Supreme Court of the State of Kansas had before it the question of interference with the personal liberty guaranteed to every citizen by the State and Federal constitutions in the case of Atchison, Topeka & Santa Fe Failway Co. *vs.* Brown (Kan.), 102 Pac., 459, in which they held unconstitutional a law of that State requiring an employer to give to a discharged employee the exact cause of discharge. The court held that it was the right of an employer to do so, or not, as he chose, and although he might be under a moral obligation, he would not be under any legal obligation to do so. In the opinion the following language is used:

> "Before approaching a discussion of the question, let us exclude any notion that the act in question is a police regulation. It will be observed that it does not affect the public welfare, health, safety, or morals of the community, or prevent the commission of any offense or other manifest evil. Where the object of the act cannot be traced to the accomplishment of some one of these purposes, it is not a police regulation. Besides, the legislature has no power to impair or limit the reasonable and lawful exercise of a right guaranteed by the Constitution, under the guise of a police regulation."

The Supreme Court of the State of Missouri in the City of Lancaster *vs.* Reed (Mo.), 207 S. W., 868, held unconstitutional an ordinance making it a misdemeanor for two persons of opposite sex to associate together upon the public ways of the city, one of them being a person of ill repute, and providing for fine and imprisonment, as infringing the rights of personal liberty. The last paragraph of the opinion deals with this phase of the question and reads as follows:

> "From the foregoing authorities it is apparent that the city could not lawfully enact this ordinance which limits the right of one in choosing his or her associates when such an one is not committing, or conspiring to commit, any offense against the law, or is without intent to commit any such offense, or to declare the lawful conduct described in the ordinance as constituting an act of public indecency under the statute. We deny the right of the city to declare an act one of public indecency where the person involved is conducting himself in an orderly and decent manner even though he may be found in the company and associating with one of ill repute. The city has no greater power to declare such an act one of public indecency than it has to declare an act an offense that is no offense against the law."

We believe, from a review of the foregoing cases that we are justified in saying that the liberty of the individual may not be curbed without the legislation designed to accomplish this purpose has a just relationship to health, morals, safety or general welfare.

The individual, under the Constitution, is left free to determine his own course of conduct except where the State finds it necessary under the police power to limit it in the interest of health, morals, safety or general welfare.

Section 53 of the Walker Law requires every corporation or association which requires an oath as a prerequisite or condition of membership, other than a labor union or benevolent order mentioned in the Benevolent Orders Law, to file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers, and revise it from time to time as specified therein.

Section 56, the one under which the relator is arrested, and from which arrest he sought to be discharged in this proceeding, makes it a misdemeanor for any person to become a member of such corporation or association, or remain a member thereof, or attend a meeting thereof, with knowledge that such corporation or association has failed to comply with said section 53, or the other sections of this act. The relator is charged with being a member of a Provisional Klan located at Buffalo, of more than twenty members, and remaining such member, and meeting at various times when the organization, the Knights of the Ku Klux Klan, had failed to comply with section 53. The complaint does not state what officer or member failed to comply with section 53, nor whose duty it was to do so. In this connection we take the liberty of saying that neither the District Attorney

nor the Attorney General of the State of New York know what officer or member is required by this law to file these statements.

It will be conceded by all that the relator has a perfect right under the liberty guaranteed to him by the Constitution to meet with an association such as this, or any other of a similar nature. In fact he can meet with any association that is not engaged in teaching treason or inciting sedition. The complaint does not charge that the Knights of the Ku Klux Klan does anything unlawful, but charges that it failed to file the statements required, and by so doing subjected the relator, who met with it, to the penalties of section 56.

This law, therefore, makes the relator guilty of a crime, when he had no intention of wrongdoing, and when the wrong if committed at all was committed by another person than himself. It may be said in answer, that he intended to meet, knowing that the corporation had not filed the statement, and that this makes *him* guilty of affirmative wrongdoing. In answer to this, we say that he cannot be deprived of his right to meet with a perfectly innocent institution simply because another person has not complied with the provisions of a law such as this, when depriving him of this right will not conserve the health or morals, or promote the safety or general welfare of the public in general.

We have searched through the opinion, both of the appellate division of the Supreme Court and the Court of Appeals of the State of New York to learn what was the reason that prompted this legislation, what wrong

the legislature might have had in mind to be remedied. The nearest approach that we can find to a reason in the mind of the appellate division is the following statement found at the bottom of page 22 of the record:

> "It is a matter of common knowledge that the association or organization of which relator is concededly a member, exercises activities tending to the prejudice and intimidation of sundry classes of our citizens. But the legislation is not confined to this society; it meets a general evil all too liable to result from the organization of such associations."

Just what the court meant by *general evil* does not seem to be clear from a careful reading of the opinion, unless the statement found at the middle of page 26 of the record is what they had in mind:

> "It may be presumed that the legislature deemed the activities of societies with an oath-bound membership liable to be detrimental to the public welfare, and in exercising its police powers in an endeavor to restrain them, it was well within its powers * * *."

The special concurring opinion of Judge Sears in the appellate court also states, as shown at the bottom of page 28 of the record:

> "We must determine whether there is an evil actually present or reasonably to be anticipated in the existence of associations, incorporated or unincorporated, having an oath-bound membership."

In the opinion of the Court of Appeals somewhat of the same reasoning is indulged, as the court makes this statement found at the top of page 45 of the record:

> "But the legislature may take notice of the potentialities of evil in secret societies, and may regulate them reasonably without depriving the members thereof of their liberty without due process of law. Indeed the danger of certain organizations has been judicially demonstrated."

If these were the purposes which the legislature had in mind, this act had no relation at all to this claimed wrong. A compliance with the act would not tend in any particular to eliminate these societies, or to control them if such were in existence. They could comply with the law and teach anything they desired. A society might arise teaching treason and sedition, comply fully with the law, and proceed with its iniquitous conduct, and the State be without knowledge of what it was doing. This law does not pretend to curb the secret activities of any institution, nor to remedy any wrong that it is doing. The most that can be said of this act, is to expose its membership to hostility and ostracism by those who oppose its membership.

Taking the Court of Appeals at its word that the legislation is intended to correct a general evil all too liable to result from the organization of such associations as contained in the above named statement, may we ask why this law excepted all but one of the oath-bound institutions, if there are *potentialities of evil in secret societies?* Why condemn some and condone others.

Another test of legislation of this kind is that it must be reasonable in order to stand the test. As stated by Judge Davis in his dissenting opinion in the appellate division, the test then must be whether the legislation is reasonable according to common experience and judgment. He says further that we have here no question of regulating business or occupations in the interest of public health or welfare. It involves the right of the legislature to enact oppressive and confiscatory laws by which citizens may be denied a common right and be subjected to unreasonable restraint and annoyance and become liable to criminal prosecution for acts long regarded harmless and innocent, where there is no manifest relation between the statute and public health, safety or welfare.

In order to determine whether this legislation is reasonable or not, let us look into the history of the past. Experience is the only test for reason, and history is but experience translated into print. Secret societies are not new in the history of the American Nation. Judge Davis, of the appellate division, is authority for the statement that Washington and many of his generals and other officers belonged to a secret society still in existence. "Even in the most discouraging days of that period," he says, "we do not learn that the organization of such societies was generally regarded dangerous to the public welfare." He further calls attention to the fact that there has been bitter opposition to such organizations among persons naturally suspicious, and he further calls attention to the bitter fight in the State of New York against this same in-

stitution to which General Washington belonged. During this period, it was bitterly assailed. Its members charged with the grossest kind of unlawfulness, and even murder. An attempt was made to prevent members of the institution from holding office. The fight was not confined to the State of New York, but in varying degrees was present throughout the Republic. It was most bitter in New England, New York and Pennsylvania, but permeated the entire nation and was an issue in two presidential elections. In Pennsylvania, in 1833, Hon. Thaddeus Stevens introduced a bill in the legislature of the State of Pennsylvania entitled "An act to suppress secret societies bound together by secret and unlawful oaths." The first section imposed a fine of one hundred dollars on any person administering an oath to another initiate into any society, or being advanced from one degree to another. The second section of the bill required all bodies of Masons and Odd Fellows to make annual report of their officers and members, with the names of those admitted during the year, together with the form of promise or obligation that has been administered during their initiation. During the course of the debate upon this bill he attacked many prominent men in the State and asked that they be brought before the house to answer as to preferment of their brethren, and went so far as to propose that the judges of State courts be interrogated as to whether the "grand hailing sign had ever been handed or sent them by either of the parties litigant."

Activities of the same nature were indulged in in the legislatures of New York, Massachusetts and other

States, and efforts made in others to disqualify its members to hold office or sit on juries. Masonry was compelled to expose its secret oath in the examination of jurors, and was exonerated.

Although this fight was bitter and attended by the ruination of many prominent men who were members of this secret society, it spent itself in ten years, and subsequent events have shown how false were the accusations made at that time. These things occurred just one hundred years ago now, and this present legislation shows that the same people who made the accusations against that great institution have yet the same feeling toward secret societies in general.

The legislators of that day intended to destroy all secret societies. They used the farce of the Morgan affair which is conceded by all reasonable thinking men to have been largely, if not entirely, fiction, as the excuse for their dastardly attacks upon all secret societies. However, time has demonstrated that the general average of these institutions have added much to our civilization, and, as Judge Davis says in his opinion, at the bottom of page 34 of the record, they "have so become a part of our social system that it is doubtful if legislation to abolish all secret societies, the good with the bad, would be constitutional."

The State undoubtedly has the right to prohibit unlawful acts on the part of individuals or societies, but it has no right under the police power to forbid or restrain the lawful activities of either, or to harass or annoy them by compelling them with no apparent purpose, except to gratify their curiosity, to reveal secret

information lawfully acquired, and having no public interest.

II.

The Act in Question Denies to Relator and Others Within Its Jurisdiction the Equal Protection of the Law.

The reason for the legislation in question, says the Court of Appeals, is to counteract the detriment to the public welfare caused by oath-bound societies. If that statement is true, the danger is not confined to the Knights of the Ku Klux Klan. It is not the only oath-bound society operating in the State of New York. In fact practically all of the benevolent orders mentioned in the Benevolent Orders Law are oath bound societies. Their membership are bound together by oaths as solemn and binding as that of the Knights of the Ku Klux Klan, yet the benevolent orders mentioned in this Benevolent Orders Law are excepted from the provisions of the act in question.

This question should be dealt with frankly, and facts issue in this case was enacted for the sole purpose of preventing the Knights of the Ku Klux Klan from operating in the State of New York. The benevolent orders mentioned in the Benevolent Orders Law are just as secret as the Klan, and their oaths taken upon the Holy Bible are just as binding as the oath given to Klansmen. If oath-bound societies are detrimental to the welfare of the people of the State of New York, and their secrecy is an outstanding menace to its

society, all who come within the class should be included in the ban of the legislature. The statement of the court that these have been in existence long enough to have secured a good reputation, does not answer this question. Men with good reputations go to penal institutions every day as criminals. The court says the wrong the legislature was seeking to eliminate was the relationship created by oath-bound societies, and the secrecy that surrounded their activities. This secrecy, they implied, will permit them to engage in unlawful practices without the knowledge of the public and the authorities of the law. If this reasoning be true, which we deny, then why not include all institutions that come within this description.

If this law is permitted to stand as a proper subject for legislative enactment, it will open the door to the State of New York to exclude Odd Fellowship, Masonry, Knights of Pythias, and other like organizations. If this decision is permitted to go unreversed it will open the door of the courts of New York to say that secret societies may be abolished entirely.

In excepting the benevolent orders mentioned in the Benevolent Orders Law from the provisions of the Walker Law in question here, relator and all other members of the Knights of the Ku Klux Klan, and the Knights of the Ku Klux Klan itself is denied the equal protection of the law.

The equal protection clause of the 14th Amendment does not take from the State the power to classify in the adoption of police laws, but admits the exercise of a wide scope or discretion in that regard, and avoids

what is done only without any reasonable basis and, therefore, is purely arbitrary. In the case of Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540; 46 L. Ed., 679, the court had under consideration an act of the Legislature of Illinois of 1893, which prohibited corporations from entering into certain agreements to fix prices and excepted agriculturists and live stock raisers. In passing upon this question the Supreme Court of the United States said:

> "The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this Court, were not included in the grants of power to the general government, and, therefore, were reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety; but if,

by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. Gibbons *vs.* Ogden, 9 Wheat., 1, 210, 6 L. Ed. 23, 73; Sinnot *vs.* Davenport, 22 How. 227, 243, 16 L. Ed. 243, 247; Missouri, K. & T. R. Co. *vs.* Haber, 169 U. S. 613, 626, 42 L. Ed. 878, 883, 18 Sup. Ct. Rep. 488.

"What may be regarded as a denial of the equal protection of the laws is a question not always easily determined, as the decisions of this Court and of the highest courts of the States will show. It is sometimes difficult to show that a State enactment, having its source in a power not controverted, infringes rights protected by the national Constitution. No rule can be formulated that will cover every case. But upon this general question we have said that the guaranty of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.' Missouri *vs.* Lewis, 101 U. S. 22, 31, sub. nom. Bowman *vs.* Lewis, 25 L. Ed. 989, 992. We have also said: 'The 14th Amendment, in declaring that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should

be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.' Barbier vs. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357, 359. This language was cited with approval in Yick Wo vs. Hopkins, 118 U. S. 356, 369, 30 L. Ed. 220, 226, 6 Sup. Ct. Rep. 1064, 1070, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In Hayes vs. Missouri, 120 U. S. 68, 71, 30 L. Ed. 578, 580, 7 Sup. Ct. Rep. 350, 352, we said that the 14th Amendment required that all persons subject to legislation limited as to the objects to which it is directed or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and conditions both in the privileges conferred, and in the liabilities imposed.' 'Due process of law and the equal protection of the laws,' this Court has said, 'are secured, if the laws operate on all alike, and

do not subject the individual to an arbitrary exercise of the powers of government.'

Duncan *vs.* Missouri, 152 U. S. 377, 382, 38 L. Ed. 485, 487, 14 Sup. Ct. Rep. 570, 572. Many other cases in this Court are to the like effect."

This question was quite carefully and thoroughly considered by the Supreme Court of the United States in the case of Cotting *vs.* Goslard, 183 U. S., 79; 46 L. Ed., 92, at page 108, where it is said:

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this Court, in Yick Wo *vs.* Hopkins, 118 U. S. 356, 369, 30 L. Ed. 220, 226, 6 S. C. 1064, 1071: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to

> the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

In a case involving classification of property for taxation, in which cases the Supreme Court of the United States has permitted the several States to go to great length in classification and yet not violate the equal protection provision of the 14th Amendment, the Supreme Court, in declaring invalid a classification statute, said:

> "It remains to consider the argument made on behalf of the State of Alabama, that the statute is justified as an exercise of the right of classification of the subjects of taxation, which has been held to be entirely consistent with the equal protection of the laws guaranteed by the 14th Amendment. It is argued that the imposition of special taxes upon foreign corporations for the privilege of doing business within the State is sufficient to justify such different taxation, because the tax imposed is different, in that the one imposed on the domestic corporation is for the privilege of being a corporation, whereas the one on the foreign corporation is

> for the privilege of such corporation to do business within the State. While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, as has been said, cannot be justified by calling it classification. Gulf, C. & S. F. R. Co. *vs.* Ellis, 165 U. S. 150, 155, 165, 41 L. Ed. 666, 668, 671, 17 Sup. Ct. Rep. 255; Cotting *vs.* Kansas City Stock Yards Co. (Cotting *vs.* Godard), 183 U. S. 79, 46 L. Ed. 92, 22 Sup. Ct. Rep. 30; Connolly *vs.* Union Sewer Pipe Co., 184 U. S. 540, 559, 46 L. Ed. 679, 689, 22 S. C. 431."

In passing upon the constitutionality of the criminal statute of the State of Louisiana in American Sugar Refining Company *vs.* McFarland, 229 Fed., 284, the court quotes an opinion of the Supreme Court of the United States in the following language:

> "Unless the legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency this statute cannot be sustained. * * * Arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. Gulf, Colorado & Santa Fe Railway *vs.* Ellis, 165 U. S. 150, 159, 17 S. C. 255, 258 (41 L. Ed. 666)."

The court further in the opinion comments upon the right to classify in legislation as follows:

> "We cannot conceive of any fair reason for exempting such a person from the operation of the act, and at the same time subjecting to its penal provisions one whose situation and conduct are exactly the same in every particular, except that his refinery is located in Louisiana, while the exempt person's refinery is located elsewhere. The result is to make the fact of one's ownership of property in Louisiana the test of the criminality of his conduct in buying a commodity in that State. We take it that a purpose of the statute was to prevent a practice resulting in undue depreciation of the price of a commodity of the State. But the statute undertakes to prevent such a practice only in the case of certain buyers, leaving beyond the reach of the prohibition other buyers whose practices may be identical and equally harmful in their tendencies" (page 287).
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> "All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as are the members of the class."
>
> "An act of class legislation to stand in the face of the Constitution must include all who belong to the class—not all who bear similarity in some character to those included, but all who cannot be distinguished from them in that particular characteristic which justified the act.

And it must include none who do not belong to the class."

Chicago, etc., Ry. Co. vs. Westby, 178 Fed., 619, at 625.

"Florida Act of 1913 imposing State license tax of $500 and county license tax of $250 on merchants offering coupons or profit-sharing certificates with merchandise is void."

Van Deman vs. Rast, 214 Fed., 833.

"Washington Act of 1913 requiring persons, firms or companies using trading stamps to pay license tax of $6,000 per year is void."

Little vs. Tanner, 208 Fed., 610.

"Arkansas Act of 1891 requiring negotiable instruments in payment of patent things or rights, EXCEPT BY DEALERS THEREIN, to follow printed form disclosing consideration, held unconstitutional."

Union Co. Natl. Bank vs. Ozan Lbr. Co., 127 Fed., 210.

"Complainant being only specially chartered railroad in Michigan, Act of 1911 imposing tax on stocks, bonds and other evidences of indebtedness of specially chartered railroads is invalid as class legislation."

Detroit Ry. Co. vs. Fuller, 205 Fed., 89. See also Royster Guano Co. vs. Virginia, 213 U. S. 412, 40 S. C. 560, 64 L. Ed. 989.

"While large discretion is necessarily given to the lawmaking power to discern evils and correct them by legislation, as obstacles to a

greater public welfare; while they make discriminations, if founded on distinctions which cannot be pronounced unreasonable; while, as said by the Supreme Court of the United States in Jacobson *vs.* Massachusetts, 197 U. S. 11, 25 S. C. 358, 49 L. Ed. 643, 3 Ann. Cas. 765:

"'In every well-ordered society, charged with the duty of conserving the safety of its members, the rights of the individual in respect to his liberty may at times under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.'

—yet, in the final analysis, the classification 'must always rest upon some difference which bears a reasonable and just relation to the act of respect to which the classification is proposed, and can never be made arbitrarily and without such basis. * * * Arbitrary selection can never be justified by calling it classification.' Connolly *vs.* Union Sewer Pipe Co., 184 U. S. 540, 22 S. C. 431, 46 L. Ed. 679. In other words, no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."

U. S. *vs.* Yount, 267 Fed., 861, at 864.

This same question of classification was given very ...reful consideration by the United States District ...ourt for the Central District of Missouri, Southwest... Bell Telephone Co. *vs.* Middlekamp, 1 F. (2d), 563, ...t page 565, which court was assembled in pursuance ... the requirements that three judges sit in matters of ...is character, and in an opinion rendered by Judges

Stone, Van Valkenburgh and Wade, the court quoted extensively from other cases bearing upon the same subject and uses the following language:

> "It is well settled that 'the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" Royster Guano Co. v. Virginia, 253 U. S. 412, 40 S. C. 560, 64 L. Ed. 989. Decided June 7, 1920. "Equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other." Cotting v. Kansas Stock Yards, 183 U. S. 79, 112, 22 S. C. 30, 43 (46 L. Ed. 92).
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> "The Court of Appeals, in this circuit, in Chicago, M. & St. P. R. Co. v. Westby, 178 Fed. 619, 102 C. C. A. 65, 47 L. R. A. (N. S.) 97, says: 'The Fourteenth Amendment to the Constitution of the United States forbids any State to "deny to any person within its jurisdiction the equal protection of the laws." How may such legislation escape this inhibition? The answer is, by classification, and the concession is freely made that the legislatures of the States may lawfully classify the subjects of their laws and make provisions applicable to one class of subjects that have no application to another class. But the members of these classes may not be selected arbitrarily without just or sound reason inherent in their respective situations and circumstances relative to the subject matter of the legislation for the difference in the burdens

imposed and the privileges conferred upon them by such a discriminatory law."

"The Supreme Court of the United States in Southern Ry. Co. *v.* Greene, 216 U. S. 411, 30 S. C. 287, 54 L. Ed. 536, 17 Ann. Cas. 1247, thus expresses it: 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that, in all cases, it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and reasonable relation to the attempted classification—and not a mere arbitrary selection.'

"The Supreme Court of Missouri has uniformly upheld these well settled rules.

"In State *v.* Baskowitz, 250 Mo. 82, 156 S. W. 945, Ann. Cas. 1915A, 477, it is said: 'The Courts have held very uniformly that the State may legislate in regard to a class, but cannot arbitrarily divide that class into two parts, giving to one part a privilege, or subjecting it to restrictions which do not apply to the others in the same class.'

"In Sams *v.* St. Louis and Meramec River Railroad Co., 174 Mo. 53, 73 S. W. 686, 61 L. R. A. 475, the court said: 'Where there are two concerns engaged in precisely the same business, and both conducting it in precisely the same manner, a statute which would undertake to impose a liability on the one and not on the other, could not be sustained in the face of either our State or our Federal Constitution.'

"In Russell *v.* Croy, 164 Mo. 69, 63 S. W. 849, it is said: 'We do mean to say the classifi-

> cation must rest on some reason other than mere ownership and that different pieces of property of the same kind, held and used for the same or similar purposes within the same jurisdiction, cannot lawfully be so classified as that one is subjected to the tax and the other exempt, merely because one belongs to a natural person and the other to a corporation, or that one is the obligation of a corporation and the other that of a natural person, or one that of a large concern and the other that of a small one.'
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> "A classification must bear a 'reasonable and just relation to the things in respect to which such classification is imposed.' Southern Ry. Co. *v.* Green, *supra*."

The Circuit Court of Appeals for the 9th Circuit in the case of Johnston *vs.* Kennecott Copper Corp., 248 Fed., 407, remarks upon the right of class legislation as follows:

> "Generally speaking, class legislation is prohibited by the equal protection of the laws in its application, is not within the prohibition, clause of the Fourteenth Amendment of the Federal Constitution, but legislation limited if within the sphere of its operation it affects alike all persons similarly situated."

The test to be applied to legislation of a State in its attack as transgressing the Fourteenth Amendment to the Constitution of the United States has been set out quite fully by the Circuit Court of Appeals of the 8th Circuit in the case of Chicago M. & St. P. Ry. Co. *vs.* Westby, 178 Fed., 619, where the court uses the following language, at page 624 of the opinion:

"In the fact of the constitutional prohibition of unequal laws, there are three indispensable conditions to a constitutional imposition of liabilities or burdens upon, or a constitutional grant of rights or privileges to, the members of one class that other members of the State do not bear or enjoy: (1) There must be such a difference between the situation and circumstances of all the members of the class and the situation and circumstances of other members of the State in relation to the subjects of the discriminatory legislation as presents a 'just and natural reason of necessity' or propriety for the difference made by the law in their liabilities and rights. While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification. Gulf, Colorado & Santa Fe Ry. Co. v. Ellis, 165 U. S. 150, 155, 165, 17 S. C. 255, 41 L. Ed. 666; Cotting v. Kansas City Stock Yards Co., 183 U. S. 79, 107-112, 22 S. C. 30, 46 L. Ed. 92; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 559, 22 S. C. 431, 46 L. Ed. 679; Southern Ry. Co. v. Greene, 216 U. S. 400, 30 S. C. 287, 54 L. Ed. (filed February 21, 1910); Nichols v. Walter, 37 Minn. 264, 33 N. W. 800; Lavallee v. St. Paul, Minneapolis & Manitoba Ry. Co., 40 Minn. 249, 252, 41 N. W. 974; State v. Loomis, 115 Mo. 307, 314, 22 S. W. 350, 21 L. R. A. 789; Ballard v. Mississippi Cot-

ton Oil Co., 81 Miss. 507, 34 South. 533, 549, 62 L. R. A. 407, 95 Am. St. Rep. 476. (2) No person who does not belong to the class may be included therein, and all persons within the influence of the legislation relative to the class must be treated alike thereby. (3) All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as are the members of the class.

"'An act of class legislation to stand in the face of the Constitution must include all who belong to the class—not all who bear similarity in some characteristics to those included, but all who cannot be distinguished from them in that particular characteristic which justifies the act. And it must include none who do not belong to the class.' Sams v. St. Louis & M. R. Co., 174 Mo. 53, 73 S. W. 686, 691, 61 L. R. A. 475; Johnson v. St. Paul & Duluth R. Co., 43 Minn. 222, 224, 45 N. W. 156, 8 L. R. A. 419; Lodi Township v. State, 51 N. J. Law, 402, 18 Atl. 749, 6 L. R. A. 56."

III.

A police regulation is like other law subject to the equal protection of the laws clause of the 14th Amendment to the Federal Constitution. In passing upon the question involved in the statement herein, the Supreme Court of the United States, in the case of Atchison, T. & S. F. R. Co. vs. Vosburg, 238 U. S., 56; 35 S. C., 675, uses the following language, at page 676:

"We agree that this legislation is properly to be regarded as a police regulation, and in that respect differs from the act that was under consideration in the Ellis Case, supra, which simply imposed a penalty upon railroad corporations for a failure to pay certain debts. But we cannot at all agree that a police regulation is not, like any other law, subject to the 'equal protection' clause of the 14th Amendment. Nothing to that effect was held or intimated in any of the cases referred to. The constitutional guaranty entitles all persons and corporations within the jurisdiction of the State to the protection of equal laws, in this as in other departments of legislation. It does not prevent classification, but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinction having a fair and substantial relation to the object sought to be accomplished by the legislation. Thus, in Atchison, T. & S. F. R. Co. *vs.* Matthews, 174 U. S. 96, 41 L. Ed. 666, 17 S. C. 255, the responsibility imposed upon railroad companies for attorneys' fees in addition to damages was sustained because designed to enforce care on the part of those companies to prevent the communication of fire and the destruction of property along their lines—a duty imposed upon them and not upon the owners of the property. We need not review the decisions, the subject being so familiar that extended discussion is unnecessary."

(See, also, Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540; 46 L. Ed., 679; the pertinent part of which is quoted in this brief.)

Gibbons *vs.* Ogden, 9 Wheat., 1, 210, 6 L. Ed., 23, at 73.
Sinnot *vs.* Davenport, 22 How., 227, at 243; 16 L. Ed., 243, at 247.
Missouri, etc., *vs.* Haber, 169 U. S., 613, 626; 42 L. Ed., 878, 883; 18 S. C., 488.

Looking at this case in the light of these decisions, we do not believe that this law can be justified as a proper use of the police power. In a Michigan case, referred to herein, where a law, general in its terms, was enacted, yet of such nature that it could only apply to one corporation, it was held to have been enacted especially for it and therefore unconstitutional.

Conclusion.

In conclusion, we would say that in order to intelligently measure this legislation by the provisions of section 1 of the 14th Amendment to the Constitution of the United States, it is necessary that we ascertain the purpose of this legislation and determine whether it is or not a proper exercise of the police power. The record full discloses the purpose of the legislation. Justice Pooley of the Supreme Court of Erie County, New York, states it as follows:

> "This legislation is apparently aimed at the organization known as the Ku Klux Klan, although it is not specifically named. All the briefs submitted, as well as the oral arguments, assume this applicability and the court may indulge the assumption" (R., 14).

The appellate division of the Supreme Court states its purpose in this language:

> "It is a matter of common knowledge that the association or organization of which relator is concededly a member exercises activities tending to the prejudice and intimidation of sundry classes of our citizens. But the legislation is not confined to this society. It meets a general evil all too liable to result from the organization of such associations" (R., 22).

The Court of Appeals states the situation from the reverse side of the question by saying that the legislature has approved the orders mentioned in the Benevolent Orders Law, and implies that others not mentioned may be of the kind described by the appellate division, and closes by saying:

> "Indeed, the danger of certain organizations has been judicially demonstrated" (R., 45).

If we were permitted to go outside of the record, we could demonstrate to the satisfaction of this Court beyond a reasonable doubt that the sole purpose of this legislation was to indirectly legislate the Knights of the Ku Klux Klan out of existence so far as the State of New York was concerned. When the law was passed, the legislature inadvertently forgot to except college fraternities, and they thus became subject to the provisions of this law. When this matter was called to their attention, a statute was enacted excepting them, showing conclusively that the intention of

the Walker Law was to attack the Knights of the Ku Klux Klan.

Not desiring to forbid organizations of this kind not mentioned in the Benevolent Orders Law to exist, fearing that this law would be clearly unconstitutional, they sought to require them to expose their membership, so that those opposing organizations of this kind might ruin them in business through systematic boycott, or subject them to the severe punishment of social ostracism. Looking into the experiences of 1827 to 35, when the Morgan affair was before the legislature of the State of New York, they determined that the knowledge of membership was the most effective engine of destruction in the hands of the hostile element. They recall that thousands demitted during this period and that whole lodges surrendered their charters as a result of this kind of persecution.

The legislature has deprived the relator, his brethren and his organization of liberties guaranteed by the Constitution without due process of law, and denied him the equal protection of the law by finding the organization guilty of high crimes and misdemeanors without a trial. This procedure is absolutely foreign to American jurisprudence. The Knights of the Ku Klux Klan has a right to be heard in its own defense, before legislation destroying it is passed by the legislature. This august body of lawmakers is not acting fairly when it takes the statement of prejudiced newspapers throughout the country as to the nature of this institution, and when the appellate division of the Supreme Court makes the statement that it is common

knowledge that this institution exercises activities tending to prejudice and intimidation of sundry classes of our citizens, we believe we are justified in saying that the court is mistaken, or that its source of common knowledge is the press of this country. In this connection we say that the press of this country has been terribly mistaken in the past relative to the activities of secret societies. When it attacked Masonry in 1830, it was absolutely unreasonable and unfair. Its attack was as general then as the attack upon the Klan has been at this time.

In answer to this statement by the appellate division and the intimation of the Court of Appeals, we will say that there is nothing in the teachings of the Klan that condemns any individual or class of individuals. We stand for certain principles that we believe to be right, and concede to every individual of every other race, color or creed the right to differ with us upon these subjects. We are not the only organization that excludes certain classes of individuals from its membership, and we are not the pioneers in this excluding business. Odd Fellowship confines its membership to the white race, so does Masonry, K. of P., and many others. Certain Jewish societies confine their membership to Jews and exclude everyone else. The Knights of Columbus confine their organization to the Catholic people, and no Protestant can take membership in this institution. Are any of these things indication that these societies are exercising activities tending to prejudice and intimidation of the classes which they exclude? There has always been, and there will always

be hostility between certain secret societies. Difference in thinking gathers men into different organizations, and between these hostile feeling often arises. In some portions of the country it is not popular to be a Republican. In other portions of the country it is very unpopular to be a Democrat, and serious altercations have resulted from a discussion of political issues. In fact, history discloses that several disgraceful fights have occurred in the halls of Congress between men of opposite political faiths. This is not a conclusive argument that it is wrong to be a Democrat or a Republican, and in fact has no bearing upon the question. Members of Protestant organizations think along entirely different lines from those composing Catholic organizations, and among certain of the membership of both such organizations the rankest hostility exists as to the other. This is not an argument against either organization, but shows the insignificance of the individuals in either who cannot concede to members of the other the right to think upon religious topics as their conscience dictates. The test of any secret society is whether it can exist in our civilization and concede to all other societies the right to exist also.

The Knights of the Ku Klux Klan is composed of native-born white American citizens who believe in the tenets of the Christian religion, purity of the white race, purity of manhood and womanhood, fostering of a stronger patriotism toward the United States, the upholding of the Constitution of these United States and every amendment thereof, the com-

plete separation of church and state, freedom of speech and press, promotion of the public schools, closer relationship between capital and American Labor, preventing the causes of mob violence and lynching, preventing unwarranted strikes by foreign labor agitators, the limitation of foreign immigration, law and order, closer relationship of pure Americanism. This is a brief and practical statement of the principles of this organization. It excludes certain individuals by reason of its teachings. Every patriotic citizen that concedes the right of Protestantism to exist in this country certainly could not object to anything in the tenets of the institution, nor anything contained in its oath, which the press has published in its entirety. Although others may differ from us upon the justice of these principles, we claim the right to dedicate ourselves to their furtherance, conceding the right of those who may differ to pursue all lawful methods to oppose these things. We do claim that it is unlawful to legislate away from us the right to promote these ideals and to meet with those who desire to cooperate.

The Supreme Court of the State of Kansas in the case of State *ex rel. vs.* Knights of the Ku Klux Klan, not reported, but pending in this Court on writ of error from the Supreme Court of that State made the following finding upon the question of violations and intimidation:

> "There is no evidence that the defendant corporation or individual defendants have ever engaged in or authorized such practices in Kansas."

This has been the verdict of every court that has judicially investigated the institution itself. No doubt, individual members of the Klan have violated the law, so have the individual members of every church in existence, both Protestant and Catholic. They transgress the law in spite of the teachings of these institutions, not because of them. Experience has taught us that mankind needs every human agency that points him upward, and in spite of the combined influence of them all, many men go astray and our penal institutions are full to overflowing. There is no lodge, association or church that can say to the other, "You are unlawful and should be legislated out of existence because your members violate the law." This is true of all of them.

It cannot be shown that the Klan ever has engaged in any lawless conduct. It can be shown that those who oppose our principles have attacked and killed our members at Herrin, Illinois, when they were doing nothing, and as experience shows not even defending themselves; that Klansmen proceeding peaceably to a meeting place in Iowa recently were stopped at a bridge by those who differ from them and beaten with clubs and stones. Several times in Massachusetts when Klansmen were holding open-air meetings on private property, they were attacked and some of their number severely injured. Like occurrences have taken place in Kansas, Colorado, Indiana, Pennsylvania, Kentucky, Wisconsin, Oklahoma, New York, and other States. Each time the press of the country announced in glaring headlines "*Klan Riot.*" This is the way

they make common knowledge. Let us be fair. There have been no riots caused by Klansmen, and we challenge the opposition to point out a single such occurrence. The facts show that we have not even defended ourselves when attacked, but turned the other cheek to be smitten. Does the legislature share with those who have attacked us in our meeting places, in the position that Protestants should not have secret societies, even though abiding by the law? The question seems to be one not of legislation, but of toleration. The question is, Can one person respect another's belief even though diametrically opposed to his own?

Our members are the same native born, white, Protestant men and women who may be found in the different Protestant churches, Masonry, Odd Fellowship, K. of P., and other like institutions. They are members of Congress, judges of State and Federal courts, governors of sovereign States, and honored citizens of all our commonwealths. An attack upon this institution is an attack upon the best citizenry of the country. To say that they exercise activities tending to the prejudice and intimidation of sundry classes of our citizens, without any investigation of any kind or character, is unfair and un American. There is not one thing that can be said against the Klan that cannot be said against every other secret organization. It operates in the same way and teaches much the same principles as found in several of those mentioned in the Benevolent Orders Law of the State of New York.

There always has been and always will be opposition to secret organizations by some people who believe

them wrong. These people have the right to their opinion and it is their privilege to hold themselves aloof from any secret society. All secret organizations hold their meetings in private and teach their tenets only to their own members. There is not one thing that can be said against any secret organization that may not in equal propriety be said against all of them. On the contrary, the argument in behalf of any one of them redounds to the good of all. That they have formed an important part and performed a useful service in the history of our United States cannot successfully be denied by any one. John Hancock, the first signer of the Declaration of Independence; Paul Revere, George Washington, Patrick Henry, and Henry Clay were all members of a great fraternal secret order, as were nearly all the original signers of the Declaration of Independence, yet, some of them lived to hear the public press say that this great secret order protected murderers and promoted lawlessness.

Secret societies in different forms have existed for centuries and no one in the light of this new day will say that their general average has not been conducive of much good. When tyranny and oppression ran riot in Europe and the Inquisition was pronouncing judgment on supposed ecclesiastical wrongdoers and men dared not speak their sentiments in public, the spirit of liberty lived on in the secret recesses of fraternal orders, when cheek to cheek and mouth to ear the sentiments of freedom and religious liberty were communicated.

Peaceful assemblage of free, native-born American

citizens in secret lodges need not beget fear in anyone. Any institution of which they are a part must be based upon just and equitable principles firmly grounded upon reason and fair dealing, or the institution will fall of its own weight. As Gamaliel said, "If this new sect be of God it is needless to oppose it, as you cannot overthrow it; if it is of the Devil it will die of itself." This was not only true in the time of Christ, but it is true now. Only the things worth while endure. They prevail in spite of opposition. The great institution referred to by Judge Davis in his dissenting opinion in the Appellate Division of the Supreme Court, withstood the opposition of the State of New York, and although the fight was bitter, emerged therefrom with flying colors and today stands above reproach. "You can fool some of the people all of the time, all of the people some of the time, but not all of the people all the time," said a great American statesman. So with societies, orders, and lodges. If they are fundamentally wrong the people will soon find it out and they will perish. On the contrary, if they fill a crying need, teaching a worthy doctrine, they endure and flourish in spite of opposition. A fair minded man or woman or collection of men or women cannot say that millions of men and women of the kind that marched down Pennsylvania Avenue about 150,000 strong represent an institution teaching prejudice and intimidation of certain citizens.

Nor does the fact that an organization confines itself to certain classes of people indicate that it is teaching prejudice and intimidation of all other classes. If so, certain Jewish societies which confine their member-

ship to Jews are also guilty. The same thing may be said of the Knights of Columbus, which confines its membership to Catholics and excludes all other people. In fact, it is almost impossible to name a secret society that does not exclude some, if not a great many classes of people, so if it is argued that exclusion of certain classes begets prejudice and teaches intimidation, then all who are in the same class should be included in the ban fixed by the legislature of this State.

The robe and helmet are the regalia of the order. They bear the same relationship to the Knights of the Ku Klux Klan as the apron does to Masonry, the collar to Odd Fellowship, the uniform of the Knights of Columbus to its membership. It is designed primarily to be worn in its lodges. All orders surround themselves with mystery and blindfold their candidates when inducting them into the mysteries of the institution. So with the Knights of the Ku Klux Klan. Instead of blindfolding the candidate we cover the identity of the membership until the proper place in the ceremony is reached, when the mystery is revealed. In the recent parade in Washington all Klansmen and Klanswomen marched with their faces uncovered.

We are somewhat amused at the efforts of opposing counsel and the Court to justify the enactment of this law in the light of history. In this connection we will say that the history of the past is, in many instances, misleading as to the conditions of the present. Organizations are now in existence that have survived for many centuries and who today have an untarnished history, but yesterday dipped their wings in the blood of oppression. Who does not remember that in New

England, in the name of religion, the history of witchcraft was written; in the name of a church Quakers had their ears pierced, their tongues cleft and other indignities imposed upon them? Our forefathers came to these shores to escape religious persecution and to enjoy the worship of God according to the dictates of their own consciences, and this because they could not do so in Europe. Who does not remember the history of the dark ages, or the story of the Inquisition? Is this history to be the rule by which institutions of the present are to be judged? We are little concerned with the history of the Ku Klux Klan fifty years ago and even though it be the same institution against which vile charges were made in the late sixties, it today stands unconvicted of any wrongdoing of any kind or character. The history of the past was probably written along the same lines as the history of today is being written, for instance, the story of the parade. The *Century Magazine* of December, 1924, which certainly is not favorable to the Klan, in commenting upon the Herrin, Illinois, situation, said that in fairness to the Ku Klux Klan, the organization had not been guilty of any lawlessness in connection with the history of that community.

In making these statements we do not want to be understood to say that no member of our organization has ever done wrong. We do say that we teach them to be law-abiding, Christian, Protestant men and women. If they transgress the law they are no worse than the members of every church, secret organization and society with which we are acquainted, but like

the balance of humanity are prone to sin in spite of the teachings of the institution.

This Court is not concerned with ancient history and is not living in the past, neither is the Legislature of the State of New York. If it is, let it mete out to all persons equally the condemnation they deserve as based upon the history of the past. We say such a course would be unjustified. The church members of today, Protestant and Catholic, are not responsible for what was done by the church a hundred years ago, and should not be visited with the wrath of the Legislature of the State of New York. If this be true, neither should any oath-bound organization be visited with the wrath of the Legislature of the State of New York, because it is now plain that fifty years ago it did wrong in some instances.

The history of the past relative to the Ku Klux Klan has been written by its enemies, and when it is correctly written, we believe that the things which transpired fifty years ago will not be found to have been unlawful. It is probably true that there were instances of wrongdoing on the part of its members; but we are confronted with the fact that there have been numerous instances at the present time of wrongdoing on the part of members of the church, both Protestant and Catholic, and members of all secret organizations as every one of them seem to have representation in the penal institutions of the several States. The wrong of individuals or numbers of individuals cannot be attributed to an organization of which they are a part. It is the teaching of the institution that determines whether or not it is fundamentally right or wrong.

The writer of this brief is a member of the Christian Church. Yet it is not what I would have it be. Its individual members many times transgress the Ten Commandments, not because of, but in spite of its teachings; and who would say that this great church should be denied the right to exist in any Commonwealth of the United States? The same thing may be said of any secret organization, many of whom stand far above reproach and whose history of well-doing in the United States of America are matters of pride. As a Mason, can I condemn the organization because a brother Mason goes wrong and commits murder; perhaps as an Odd Fellow, do I condemn the institution because I know some Odd Fellows are in penal institutions; as a churchman, can I condemn the church because yesterday it was a persecutor? Let us live in the light of today, looking forward to the morrow, and forgetting the errors of yesterday. In the words of Paul, "Let us forget the things which are in the past and press forward to the mark of our calling." We should not have the Walker Law on one hand in New York and the Oregon School Law on the other hand in Oregon. Retaliation begets retaliation.

This law is not directed against the contents of the oath, nor does it forbid certain kinds of propaganda. All of the Acts which the eminent Attorney General fears may be reached by a general law forbidding any person or organization to teach crime, treason, disloyalty to the United States, or that its citizens owe allegiance to any authority, civil, benevolent, or ecclesiastical, above the Government of the United States. This will reach organizations with past bad histories

as well as wrongdoing organizations of today. It will permit the dead past to bury its dead, and live in the resurrection of a new day.

At this time the Ku Klux Klan as an institution has not been convicted of present-day wrongdoing. If individual members of the Klan have not been guilty of wrongdoing we are exceptionally virtuous, above every other organization in the United States. If members of our organization have done wrong then we are in the same class with other secret organizations throughout the United States, including churches, both Protestant and Catholic, and that in the light of the history of today. We do not claim to be perfect; but we would say, let him that is without sin cast the first stone.

We, therefore, submit that sections 53, 54, 55, and 56 of Article 5A of the Civil Rights Law, being Chapter 664, Laws of 1923 of the State of New York, known as The Walker Law, is unconstitutional and void and in contravention of Section 1 of the 14th Amendment to the Constitution of the United States, in that it deprives relator and the organization to which he belongs, of life, liberty, and property, without due process of law, and denies him and the organization the equal protection of the law.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED
SEP 29 1927
CHARLES ELMORE CROPLEY
Clerk

(31824)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. [redacted] 432

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.*,
GEORGE W. BRYANT, *Plaintiff-in-Error,*

vs.

CHARLES F. ZIMMERMAN, Chief of Police of the City of Buffalo, N. Y., FRANK W. TYLER, DEPUTY SHERIFF WAHL.

In Error to the Supreme Court of the State of New York.

BRIEF FOR ATTORNEY GENERAL, OF THE STATE OF NEW YORK.

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Supreme Court of the United States

October Term, 1926.

No. 332.

The People of the State of New York *ex rel.* George W. Bryant, *Plaintiff-in-Error*,

vs.

Charles F. Zimmerman, Chief of Police of the City of Buffalo, N. Y., Frank W. Tyler, Deputy Sheriff Wahl.

In Error to the Supreme Court of the State of New York.

BRIEF FOR THE ATTORNEY GENERAL, OF THE STATE OF NEW YORK.

Statement.

The only question to be decided by this Court is the constitutionality of Chapter 664 of the Laws of 1923, con-

monly known as the Walker Law and which are Sections 53 and 56 of Article 5 A of the Civil Rights Law. The parts of this legislation in which we are interested is the following:

The Walker Law.

(R. 14.)

ARTICLE V-A.

S 53. Copies of Documents and Statements to be Filed. Every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders law, within thirty days after this article takes effect, and every such corporation or association hereafter organized, within ten days after the adoption thereof, shall file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year. Every such corporation and association shall, in case its constitution, by-laws, rules, regulations or oath of membership or any part thereof, be revised, changed or amended, within ten days after such revision or amendment file with the Secretary of State a sworn copy of such revised, changed or amended constitution, by-law, rule, regulation or oath of membership. Every such corporation or association shall within thirty days after a change has been made in its officers file with the Secretary of State a sworn statement showing such change. Every such corporation or association shall at intervals of six months file with the Secretary of State a sworn statement showing the names and addresses of such additional members as have been received in such corporation or association during such interval.

New. Added by L. 1923, ch. 664 in effect May 23, 1923.

S 56. Offences: Penalties. Any corporation or association violating any provision of this article

shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than ten thousand dollars. Any officer of such corporation or association and every member of the board of directors, trustees or other similar bodies, who violates any provision of this article or permits or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. Any person who becomes a member of any such corporation or association, or remains a member thereof, or attends a meeting thereof, with knowledge that such corporation or association has failed to comply with any provision of this article, shall be guilty of misdemeanor.

New. Added by L. 1923, ch. 664, in effect May 23, 1923.

Plaintiff-in-error claims that these sections are unconstitutional in that they contravene Section 1 of the XIV Amendment to the Constitution of the United States.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The plaintiff-in-error, George W. Bryant, was arrested for violating the aforesaid law and was in the custody of the defendants-in-error.

The plaintiff thereupon obtained a writ of habeas corpus from Hon. Charles A. Pooley, a Justice of the Supreme Court of the State of New York, upon a petition which set forth that this law was unconstitutional. At this point the Attorney General of the State of New York intervened and was made a party to the proceeding for the

reason that the constitutionality of a State Statute was involved. The question of the constitutionality of the act was then exhaustively argued and briefed by the attorneys for the respective parties and finally the writ was dismissed on November 7, 1924, by said Justice in an opinion.

People *ex rel.* Bryant v. Sheriff of Erie County, 123 Misc. 859 (R. 13).

The plaintiff-in-error thereupon appealed from the order dismissing said writ of habeas corpus to the Supreme Court, Appellate Division, Fourth Department, where this question was argued orally and duly submitted on printed papers. This court affirmed the order of Mr. Justice Pooley, four Justices being for affirmance and one for reversal.

People *ex rel.* Bryant v. Zimmerman, 213 A. D. 414.

In making this decision Mr. Justice Clark wrote the prevailing opinion (R. 20) which was concurred in by Mr. Justice Sears in a separate opinion (R. 27). Presiding Justice Hubbs and Justice Taylor concurred without opinions and Mr. Justice Davis dissented with an opinion (R. 31).

The plaintiff-in-error then took an appeal to the Court of Appeals of the State of New York which is the court of last resort in the State. This question was there submitted on oral arguments and printed briefs. The Court of Appeals affirmed the orders of the lower courts and decided the enactment constitutional. Judge Pound writing the opinion which was concurred in by the other six Judges who heard the argument.

People *ex rel.* Bryant v. Zimmerman, 241 N. Y. 405 (R. 42).

It seems then that five Justices of the Supreme Court, State of New York, which is the highest court of original

jurisdiction of the State, held the law to be constitutional, with one Justice holding to the contrary, and that the seven Judges of the Court of Appeals which is the court of last resort in the State of New York held the law to be constitutional.

The information of the District Attorney stated that the unincorporated association in question was the Ku Klux Klan which is not and could not be denied in these proceedings. The attorney for the relator in his brief freely admits that the Law in question was aimed at the Ku Klux Klan, so for the purpose of this argument we may assume that the law was enacted by the legislature to regulate the association or to regulate a class of persons known as the Ku Klux Klan and any other association of a similar nature; that the relator was a member of one of the associations of such order.

POINT I.

The relator may be heard only as some alleged unconstitutional feature of the act may injure him.

It is submitted that under a Writ of Habeas Corpus the relator must show that the act in question is unconstitutional as it affects him without regard to how the act might affect other persons. He must show that the act or some part of it is unconstitutional, in that as a member of the Ku Klux Klan he is denied some right guaranteed him by the constitution of the State or Nation. The question then to be decided here is whether this statute is constitutional in so far as it affects the relator as a member of the Ku Klux Klan. Even though the act might be unconstitutional if the point was raised by some other person or organiza-

tion which might be affected, yet that would not make it unconstitutional in this proceeding.

Engel vs. O'Malley, 219 U. S. 28.

In Quong Wing vs. Kirkandall, 223 U. S. 59, Mr. Justice Holmes says, "Laws frequently are enforced which the Court recognizes as possibly or probably invalid if attacked by a different interest or in a different way."

POINT II.

The statute in question is not unreasonable or arbitrary.

The relator and his associates were required under this statute to file with the Secretary of State their by-laws, rules and regulations, the text of their oath and the names of its members and officers. The counsel for the Klan have argued that their oath was not a secret as it has already been published throughout the country. What they most object to is publicity in regard to their membership and their officers. In this connection the Court's attention is called to the fact that all organizations in this country, whether secret or not, have printed for general distribution pamphlets giving the names of their officers and the list of members together with the rules, regulations and by-laws of such orders. Every order of any importance does this annually.

The publication of the names of the persons composing the membership of the Klan seems to be the part of the law about which there is the most complaint. The plaintiff-in-error in his brief, page 35, says this:

> "This law does not pretend to curb the secret activities of any institution, nor to remedy any wrong

that it is doing. The most that can be said of this act, is to expose its membership to hostility and ostracism by those who oppose its membership."

This is the meat of the whole controversy. The Klan were going about with hoods over their faces, doing deeds and advancing doctrines which were thought by many to be in opposition to the principles of American Liberty. This law was passed to take the mask from the faces of such persons and to bring them out into the open so that they would stand on an equal footing with all other American citizens. It would bring about a condition so that every one would know who belonged to this order or to any other order of a similar nature. It certainly cannot be said that a law requiring this order to make public its membership, the same as every other order in this country does voluntarily, is unreasonable or arbitrary.

POINT III.

The law in question was enacted in pursuance to the police power.

Justice Sears in his opinion in the Appellate Division well stated this principle as follows (R. 27):

"Obviously the justification for this enactment must be sought in that broad field of legislative authority inherent in sovereignty to provide for the life, safety, health, morals and welfare of society, generally called the 'police power.' Statutes adopted for such purposes usually infringe to a greater or less extent upon the liberty and property of individuals, but the guaranties of the Federal and State Constitutions in respect to liberty and property (U. S. Const. 14th Amendt. & 1; N. Y. Const. Arts. 1 & 6) are not absolute but reach their limit when the general welfare runs counter to their assertion. (Health Department v.

Rector, etc., 145 N. Y. 32; Bertholf v. O'Reilly, 74 *id.* 509.) The line is difficult to draw between the valid exercise of the police power and the unconstitutional deprivation of liberty and property. (People v. Williams, 189 N. Y. 131; People v. Charles Schweinler Press, 214 *id.* 395; Wright v. Hart, 182 *id.* 330; Klein v. Maravelas, 219 *id.* 383.) We start in every case, however, with the presumption in favor of the constitutionality of the statute. The legislature is endowed with wide discretionary powers to determine both whether evil threatens the general welfare and what means should be adopted to defeat it. The determination of these matters is generally legislative and not judicial."

Applying these principles to the present case, we must first determine whether there is an evil actually present or reasonably to be anticipated, in the existence of associations, incorporated or unincorporated, having an oath-bound membership. Although there was no legislative commission to investigate the subject before the passage of the act, yet we must assume that the legislature did investigate and took into consideration in the enactment all matters of general or widespread notoriety and belief.

(Matter of Stubbe v. Adamson, *supra*;
Safee v. City of Buffalo, 204 App. Div. 561.)

In Bertholf v. O'Reilly, 74 N. Y. 522, this language is used:

"The police power so-called inheres in every sovereignty and is essential to the maintenance of public order and the preservation of mutual rights from the disturbing conflicts which would arise in the absence of any controlling, regulating authority, and has been constantly exercised by the legislature in a great variety of cases."

In matter of Stubbe, *supra*, it was said:

"Presumably the legislature had information of

conditions which in its judgment justifies the legislation here attacked as unconstitutional."

Justice Clark in his opinion said this:

"The legislature and the Courts may well take notice of matters and tendencies generally recognized among the people."

Fuller vs. Oregon, 208 U. S. 412.

Brown vs. Piper, 91 U. S. 37.

In People vs. Beakes Dairy Co., *supra*, at page 428 the Court of Appeals says:

"If the legislature can check impending ills before they become notorious, the Court should not say that it has acted too soon."

The legislature has plenary power, not only to maintain order within the boundaries of the State, but also to protect itself from the seditious propaganda and its citizens from malicious discrimination and wanton intimidation. The prevention and repression of such evils is well within the legislative power and classification (provided it is not palpably arbitrary) may be resorted to in carrying out the legislative will. This is established by a long line of authorities.

People vs. Beakes Dairy Co., *supra*.

People vs. Klinck Packing Co., 214 N. Y. 121.

People vs. West, 106 N. Y. 293.

People vs. Charles Schweinler Press, 214 N. Y. 395.

Patsone vs. Pennsylvania, 232 U. S. 144.

These principles having been established we now come to the question as to whether the circumstances of the times justified the legislature. The legislature had knowledge that in other countries trouble had been brought on by reason of the existence of oath-bound societies, The Mafia in

Italy; Boxers in China; Nihilists in Russia, as well as the Camorra; the Carbonari, the Fenians and the Tugenbund. In this country the Molly McGuires in Pennsylvania and the Anti-renters in New York. Also in our own country at about the close of the Civil War the Knights of the Ku Klux Klan and the White Camelia. This Klan organization was a secret, oath-bound society of more than twenty members and at least had some of the characteristics of the present organization. It was thought necessary at that time to proceed against this organization by executive proclamation as a menace to free government, "Messages and papers of the President, Vol. 7 pgs. 132, 141, 150, 164." This organization was required to disband and give up their uniforms and disguises. This proclamation was very drastic and far reaching. The Klansman could not resort to Habeas Corpus for the reason that it had been suspended by the President. A federal statute was even passed to regulate the organization.

"17 U. S. Statute at large, Chap. XXII, pgs. 13-15."

At the time this statute was passed the organization known as the Ku Klux Klan was much more active than at present. The legislature as well as the citizens of the State knew that this organization met in the night time in fields far away from human habitation. That they were disguised with hoods and robes and that they burned crosses. It is common knowledge that trouble has been the result of some of these meetings and that people have been terrorized by their proceedings. It is well known that this organization discriminates against persons on account of their religion and color; that the members of the organization are oath bound; that the organization attempts to right wrongs without the aid of the Courts or the public officials having charge of such matters. That some of their

principles were unAmerican. At the time of this enactment this organization kept secret its membership, the officers of its lodges, its oaths and everything in connection with its activities. It also kept secret its meeting places. The evil of an organization of this kind is its secrecy. If its officers and membership were known, if its meeting places made public, and its purposes not concealed, it would not have been considered by the legislature a subject for legislation. The requirements of the act certainly cannot be considered severe. This class of oath-bound societies were simply required to file with the Secretary of State their by-laws, rules and regulations, the text of their oath, the names of its officers, and members. The remedy provided by the legislature simply put this class of organizations on a par with the other well known secret organizations of the country. The secret organizations about which so much has been said by the attorneys for the relator, of their own volition make public practically everything that is required by his act. They publish for general distribution pamphlets giving the names of their officers and a full list of their members and in many cases their by-laws and rules and regulations. They give to the public press the result of their elections at the time they are held and a list of all new members which are initiated. It can therefore be seen that the legislature had sufficient grounds to believe that the Ku Klux Klan or any similar organization was a menace to the welfare of the State. They adopted a remedy which was not burdensome and did not infringe upon the liberties of this class of people, but only required them to place themselves in the same position as other secret societies. The legislature of this State is not the only one which considered such legislation necessary. "Act of Louisiana, Chapt. 2 Laws 1924." The relator has much to say in favor of this order known as the Ku Klux Klan.

They tell of the thousands marching in Washington with their faces uncovered, and of their good behavior while in the Capitol City. It is safe to say that had they conducted themselves in such a manner prior to the enactment of this legislation, that the legislature would not have acted. Perhaps it is on account of this legislation and the legislation in Louisiana and public opinion throughout the country that has brought about this change in their method. It is quite possible that if this organization carries on its business in an open and above board manner that the legislature will see fit to place this organization in the exempt class with the other benevolent orders. At any rate this is not a matter for the Courts to decide but is for the legislature to act upon.

Judge Pound wrote for the Court of Appeals, R. 45; summed up the matter in this way:

> "But the Legislature may take notice of the potentialities of evil in secret societies, and may regulate them reasonably without depriving the members thereof of their liberty without due process of law. Indeed, the danger of certain organizations has been judicially demonstrated. The manifesto of the political party known as the Left Wing of the Socialist Party, or Communists, has been said openly to advocate criminal anarchy in violation of the Provisions of the Penal Law (People v. Gitlow, 234 N. Y. 132; affirmed 45 S. C. 625). Secret societies may be formed for the same purposes. The Legislature must, however, adopt a reasonable ground of classification in regulating such secret societies and organizations (Lawton v. Steele, 152 U. S. 133; People v. Klinck Packing Co., 214 N. Y. 121; People v. Beakes Dairy Co., 222 N. Y. 416, 429). It cannot legitimately vent its permanent or passing wrath on a single society unless such society is known or shown to be in a class by itself. The present statute addresses itself to very general characteristics which admittedly may include the most laudable as well as the vicious. It seems reasonable to separate the

known from the unknown, the presumptively good from the possibly evil, the sheep from the goats. Benevolent orders, labor unions and college fraternities have existed for many years and while not immune from hostile criticism, have on the whole justified their existence. Conceivably those that remain, or some of them, might win equal favor on better acquaintance. With the wisdom of the legislation in question we have not to do. The Legislature may doubtless strike at a fancied evil, believed by many to exist, without balancing with accuracy the actual danger to the State against the beneficent purposes publicly avowed by the members of such societies (Otis v. Parker, 187 U. S. 606, 609). • • •

Assuming that all might be included, on judicial review, a classification is not held to be bad because it is not comprehensive. The Legislature need not attack the whole evil at once (Keokee Coke Co. v. Taylor, 234 U. S. 224, 227). Certain oath-bound societies have in the past, as matter of common knowledge, been revolutionary and a menace to established government. For the purpose of regulating Sunday labor one rule has been made for barbers in New York and Saratoga, while another rule is applied to the rest of the State (People v. Havnor, 149 N. Y. 195). As an oath is recognized by many as the highest form of obligation, a distinction may easily be made between oath-bound secret societies and societies which bind their members by pledges of less time-honored solemnity and between accepted oath-bound societies and societies in general. The classification we have to consider is real and readily made as matter of form. It may not rest on a very substantial basis in the opinion of many, but 'the power to declare a law unconstitutional is always exercised with reluctance' (Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 554). The enactment before us may be upheld as not 'actually and palpably unreasonable and arbitrary' on the authority of precedents which have gone far to uphold legislative power in matters of classification (Radice v. New York, 264 U. S. 292, 296, 297). It rests on an opinion reasonably permissible for its validity."

In conclusion it is submitted that the Legislature of the State of New York knew of the activities of the Ku Klux Klan at the time of the enactment in question. It was a matter of common knowledge that orders were being formed throughout the State and that their meetings were guarded with great secrecy. They met invariably in the night time in fields and concealed their identity by wearing hoods over their faces. They terrorized those not connected with them by burning crosses in the middle of the night. In many cases they sought to correct conditions in communities by taking matters in their own hands without the aid of the public official or courts. They took an active part in political elections by discriminating against candidates of certain religion, color, etc. In many cases the circulation by the Klan of lists which they called preferred lists had a decided influence upon elections. It was apparent that the voters failed to take into consideration the fitness of candidates and that they entirely disregarded party lines. All of these activities were conducted in secret, no one outside of the order knowing its membership, officers or advisors. The Legislature of the State of New York having full knowledge of all of these facts felt that orders or societies conducting themselves in this way were a menace to the State and so they sought to bring the Ku Klux Klan or any other similar organization out into the open and have them conduct their affairs in a manner similar to other societies.

If the Klan is as virtuous as our friends try to make out, it certainly can not contend that the business of its members could be ruined or that they would be boycotted if their identity was revealed. It is hardly consistent to argue that this order is on a par with orders like the Masons, Odd Fellows and Knights of Pythias and to contend that their membership would be ruined if it was made public. The Legislature went but a short way when it passed

the act in question which was most necessary under the circumstances. President Coolidge recognized the danger of race prejudice when he said in his message of December, 1926,

> "The social well-being of our country requires our constant effort for the amelioration of race prejudice and the extension to all elements of equal opportunity and equal protection under the laws which are guaranteed by the Constitution. The Federal government especially is charged with the obligation in behalf of the colored people of the nation."

The experience of the times has proven the wisdom of this enactment. In Indiana, Illinois, Alabama and other Southern States where the Klan has not been in any way restrained, there has been disorder and happenings which have been a menace to the country. In New York State the influence of this statute has been such that very little or any trouble has resulted. The wisdom of the Legislature has been demonstrated. No complaint has come from any class of citizens except the Klan. All other organizations have been willing to conform with the provisions of this enactment. No other class of citizens feel oppressed by having to make public the names of the members of any society or order.

POINT IV.

It is submitted that the orders of the Courts of the State of New York should be affirmed and that the law should be declared constitutional.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. [redacted] 482

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.*,
GEORGE W. BRYANT,
Plaintiff in Error,

vs.

CHARLES F. ZIMMERMAN, Chief of Police of the City of Buffalo, N. Y., FRANK W. TYLER, DEPUTY SHERIFF WAHL.

In Error to the Supreme Court of the State of New York.

BRIEF FOR DEFENDANTS IN ERROR.

GUY B. MOORE,
District Attorney of Erie County,
For Defendants in Error,
Buffalo, New York.

WALTER F. HOFHEINS,
Of Counsel.

No. 31,824.

BATAVIA TIMES, LAW PRINTERS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 332.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.*, GEORGE W. BRYANT,

Plaintiff in Error,

vs.

CHARLES F. ZIMMERMAN, Chief of Police of the City of Buffalo, N. Y., FRANK W. TYLER, DEPUTY SHERIFF WAHL.

In Error to the Supreme Court of the State of New York.

BRIEF FOR DEFENDANTS IN ERROR.

Statement.

The question presented for determination by the Writ of Error in this case is the constitutionality of Sections 53

and 56 of Article 5-A of the Civil Rights Law, being portions of Chapter 664, Laws of 1923, of the State of New York, known as the Walker Law, which are as follows:

"SEC. 53. COPIES OF DOCUMENTS AND STATEMENTS TO BE FILED.

Every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership, other than a labor union or a benevolent order mentioned in the benevolent orders law, within thirty days after this article takes effect, and every such corporation or association hereafter organized, within ten days after the adoption thereof, shall file with the secretary of state a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year. Every such corporation and association shall, in case its constitution, by-laws, rules, regulations or oath of membership or any part thereof, be revised, changed or amended, within ten days after such revision or amendment file with the secretary of state a sworn copy of such revised, changed or amended constitution, by-law, rule, regulation or oath of membership. Every such corporation or association shall within thirty days after a change has been made in its officers file with the secretary of state a sworn statement showing such change. Every such corporation or association shall at intervals of six months file with the secretary of state a sworn statement showing the names and addresses of such additional members as have been received in such corporation or association during such interval."

"SEC. 56. OFFENSES; PENALTIES.

Any corporation or association violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than ten thousand dollars. Any officer of such corporation or association and every member of the board of directors, trustees or other similar body, who violates any provision of this article or permits or acquiesces in the violation of any provision of this article by any such corporation shall be guilty of a misdemeanor. Any person who becomes a member of any such corporation or association, or remains a member thereof, or attends a meeting thereof, with knowledge that such corporation or association has failed to comply with any provision of this article, shall be guilty of a misdemeanor.

Plaintiff in error claims that these sections are unconstitutional, null and void and that they contravene Section 1 of the XIV Amendment to the Constitution of the United States which provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

These laws became effective May 22, 1923.

The plaintiff in error, one George W. Bryant, was arrested on a warrant duly issued out of the City Court of Buffalo, upon an information filed with said court charging the said plaintiff in error with violating the aforementioned section, 56, of Article 5-A of the Civil Rights Law of the State of New York (R. 8-10).

Upon such arrest plaintiff in error, while in the custody of respondents, obtained a Writ of Habeas Corpus from Hon. Charles A. Pooley, Justice of the Supreme Court of the State of New York, upon a petition setting forth that the magistrate who issued such warrant of arrest was without jurisdiction inasmuch as Chapter 664 of the Laws of 1923 is unconstitutional, void and of no force and effect. (R. 5-7).

Such Writ of Habeas Corpus was thereafter and on November 7, 1924, dismissed by an order of the Special Term of the Supreme Court of the State of New York, (R. 12) and plaintiff in error thereafter and on November 8, 1924, duly appealed from such order dismissing said Writ of Habeas Corpus, to the Supreme Court of the State of New York, Appellate Division, Fourth Department.

On May 22, 1925, said order dismissing said Writ of Habeas Corpus was affirmed by said Appellate Division. (R. 18).

Thereafter and on June 2, 1925, plaintiff in error duly appealed to the Court of Appeals of the State of New York from the order of the Appellate Division, Supreme Court, Fourth Department, dated May 22, 1925, (R. 39) and there-

after and on January 12, 1926, said Court of Appeals of the State of New York, the highest court of law and equity of the State of New York, adjudged that the order of the Appellate Division of the Supreme Court, appealed from herein, be duly affirmed, and remitted the record to the Supreme Court of the State of New York, and made the order of the said Court of Appeals the order of the Supreme Court of the State of New York.

This case comes to this Court upon Writ of Error issued to the Supreme Court of the State of New York.

Opinions were written by the Courts of the State of New York, at Special Term of the Supreme Court, Appellate Division of the Supreme Court, and the Court of Appeals. These opinions are reported as People *ex rel.*, etc. vs. Zimmerman, as follows:

123 Misc., 859.
213 App. Div. 414.
241 N. Y., 405.

These opinions are printed in the record at Pages 13, 20, 27, 31 and 42.

Facts.

The relator was arrested upon a warrant issued out of the City Court of Buffalo for a violation of Section 56, Article 5-A, of the Civil Rights Law. (R. 10).

Thereupon, he secured a Writ of Habeas Corpus upon the theory that the statute in question is unconstitutional. (R. 5-7).

The information upon which the warrant was issued charged that relator attended a meeting of, and remained a member of, an association known as Buffalo Provisional Klan of the Knights of the Ku Klux Klan with knowledge that said association had not complied with the provisions of Section 53 of Article 5-A, of the Civil Rights Law, in that said association had failed and neglected to file with the Secretary of State a sworn copy of its by-laws, rules, regulations, oath of membership, a roster of its membership, and a list of its officers for the current year.

And that said association is an unincorporated association, having a membership of more than twenty persons, and which requires an oath as a prerequisite and as a condition of membership; and that said association is not a labor union nor a benevolent order mentioned in the Benevolent Orders Law of the State of New York. (R. 8, 9).

POINT I.

Relator may resort to Writ of Habeas Corpus to test the constitutionality of the statute, but only in so far as the provisions of the statute apply to him.

In adopting this remedy, relator is confined solely to the provisions of the statute in dispute and to the effect of those provisions upon his own rights.

Resort cannot be had to outside facts.

It is of no consequence what effect the statute might have upon others.

Engel vs. O'Malley, 219 U. S. 28.

It will be observed that the information upon which the warrant was issued does not allege any facts in violation of Sections 54 and 55 of Article 5-A of the Civil Rights Law.

The information rests solely upon that part of Section 56 which makes it a misdemeanor to remain a member of or attend a meeting of such an association with knowledge that it had failed to comply with the provisions of Section 53.

Interwoven with relator's argument upon this appeal is the claim that Sections 54 and 55 of Article 5-A are unconstitutional.

That subject we shall not discuss because the provisions of these sections are immaterial in the instant case for the two reasons:

FIRST: They do not in any way affect the rights of the relator in so far as this proceeding is concerned.

SECOND: Even though Sections 54 and 55 of Article 5-A of the Civil Rights Laws were unconstitutional that would not affect the validity of the remainder of the statute, namely: Sections 53 and 56.

A mere examination of the statute discloses that Sections 54 and 55 are so totally distinct and separate from the rest of the statute that, if eliminated from it, they would not in any manner affect Sections 53 and 56. The law is well settled that if different sections of a statute are independent of each other, that which is unconstitutional may be disregarded, and valid sections may stand and be enforced. But if an obnoxious section is of such import that the other sections without it would cause results not con-

templated or desired by the legislature, then the entire statute must be held inoperative.

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540.

This rule is so well established that we do not deem it necessary to cite other authorities upholding it.

Under this rule, it is perfectly clear that even though Sections 54 and 55 should be held obnoxious to the constitution, that they are in no way so related to the remainder of the statute that the elimination of those sections would in any manner affect or impair the results sought by the Legislature in the enactment of Sections 53 and 56 of the act.

We are not in any manner conceding that there is any just criticism of either Section 54 or 55, but feel that, under the circumstances, it is not necessary to discuss that question.

POINT II.

The statute in question is a valid exercise of the police power of the State, and is therefore constitutional.

As we have already shown, in the instant case, we are interested only in the provisions of Sections 53 and 56 of the statute in question.

In the briefs, and in the oral arguments below, counsel for relator and counsel for those who were allowed to intervene strenuously insisted that this statute was aimed solely at the so-called Klan.

On behalf of the respondent, we disputed in the Courts below, as we here dispute, any claim of that character.

It may well be that the statute was enacted because of the claim that the Klan is an association or organization created to deny to certain citizens their constitutional rights because of their race, religion or color.

Undoubtedly, the general public has believed that this was the purpose of that particular organization. There is nothing in the record, however, to show what the objects of that organization are. For the purposes of this appeal, however, we may assume that the Legislature believed that these were the purposes of that organization and that, therefore, the Legislature had in mind that similar organizations might be created, based upon the same or other unconstitutional features, and that, therefore, it was in the interest of the public and to promote the public's general welfare and law and order in the community that a statute should be enacted which would prevent the existence of such organizations, by requiring the filing of certain facts in regard to them and by casting the light of publicity upon such improper and un-American institutions, and in that way destroy their activities.

The validity of the statute is challenged upon two grounds:

FIRST: That the exemption from the provisions of the statute of labor unions and the benevolent orders mentioned in the Benevolent Orders Law is an unlawful classification in violation of Article XIV, Section 1 of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States, and that no State shall deprive any citizen of life, liberty, or property, without due process of law, and that no State shall deny to any person within its jurisdiction the equal protection of the laws.

SECOND: That limiting the application of the statute to associations of twenty or more persons is also an unlawful discrimination in violation of the aforesaid provisions.

FIRST: Exempting from the provisions of the statute labor unions and benevolent orders mentioned in the Benevolent Orders Law is a valid classification because it is based upon reasonable grounds and is not essentially arbitrary.

Although relator asserts that the statute in question cannot be protected and saved as a legitimate exercise of the police power of the state, an examination of the cases cited by him conclusively shows that there is no dispute between us as to the established law on this subject.

The only controversy is in regard to the application of that law to the facts upon which this proceeding is based.

"There is no constitutional prohibition against class legislation as such, if the classification is based on some reasonable grounds and is not essentially arbitrary."

People vs. Brakes, etc., 222 N. Y., 416-429.

Since the statement of this rule of law is found running through the various cases cited by relator, it is unnecessary to burden this Court with a large number of citations tending to sustain this proposition.

As tending to sustain our contention, however, it is interesting to consider a very recent statement by the Supreme Court of the United States on this subject.

In Radice vs. New York, the Supreme Court sustained the constitutionality of a statute of this state prohibiting the employment of women in restaurants after 10 o'clock at night.

The effect of the statute was limited to cities of the first and second class and excluded from its operation restaurant employees of a special kind, and of hotels and employees' lunch rooms. The claim that these exemptions and limitations constituted arbitrary and unreasonable classification was denied by this Court, and it sustained the New York Court of Appeals, which had already declared the act in question to be constitutional.

Speaking for the Court in that case, Justice Sutherland said:

> "Of course, the mere fact of classification is not enough to put a statute beyond the reach of the equality provision of the 14th Amendment. Such classification must not be 'purely arbitrary, oppressive, or capricious.'" (Citing cases.) "But the mere production of inequality is not enough. Every selection of persons for regulation so results, in some degree. The inequality produced, in order to encounter the challenge of the Constitution, must be 'actually and palpably unreasonable and arbitrary.'" (Citing cases.)
>
> *Radice vs. New York*, 264 U. S. 292.

The same rule is enunciated in another Supreme Court case involving a statute similar to that in the Radice case,

and which also sustains our contention in the instant case.

Miller vs. Wilson, 236 U. S., at page 382.

Perhaps as complete a statement as to the extent and limits of the police power of the state is to be found in a case in the United States Supreme Court, where it is declared:

> "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the Appellate Courts of nearly every state in the Union. It is universally conceded to include everything essential to the public safety, health and morals, • • • Beyond this, however, the state may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. Barbier vs. Connolly, 113 U. S. 27 (29, 32); Kidd vs. Pearson, 128 U. S. 1 (32, 46)."

Lawton vs. Steele, 152 U. S. 135, at page 137.

We contend that the exemption in question is a reasonable classification; that it is essential to the public safety and morals; that the public interests demand a statute of this character; and that the legislature in enacting the statute was invested with a large discretion to determine not only what the interests of the public require, but also what measures are necessary for the protection of such interests.

> "Every presumption is in favor of the constitutionality of an act of the legislature, and, if the Constitution and the act can be reasonably construed so as to enable the latter to stand, it is the duty of the courts to give them that construction."

People ex rel. Met. St. Ry. Co. vs. Tax Comrs., 174 N. Y. 417, at page 437.
People ex rel. Simon vs. Bradley, 207 N. Y. 592.
People vs. Schwienler Press, 214 N. Y. 395.

We start, therefore, with the presumption that the statute in question is constitutional, and with the further presumption, which is a well established rule of law, that in enacting the statute the legislature informed itself of conditions bearing upon the proposed legislation.

There is no force in the contention that this classification is unreasonable or arbitrary, or that the statute unlawfully discriminates against any one. It does not forbid the existence of corporations or associations of the character mentioned in the statute, but simply directs that every such corporation or association which requires an oath as a prerequisite or condition of membership, shall file with the Secretary of State a sworn copy of its constitution, etc. It is a matter of common knowledge that reputable organizations and associations that require an oath of membership, in almost every instance, make public the constitution of the association, and publish a roster of its membership.

It is a matter of common knowledge that copies of such constitutions and such rosters are easily accessible to the public. Therefore, the demands of the statute in question simply require that those corporations and associations coming within its provisions shall be compelled to do what the other organizations referred to voluntarily do.

Plainly, the object of the statute is to give publicity to such organizations on the theory that secret oath bound organizations of that character may be inimical to public welfare and, therefore, that it is in the interests of the gen-

eral public that such an association should be required to make public, in the manner specified, the general purposes of the organization, and a list of its membership.

It is a matter of common knowledge and, therefore, of course, well known to the legislature that there is nothing harmful in labor unions. It is a matter of common knowledge, and, therefore, of course, well known to the legislature that the various benevolent orders enumerated in the Benevolent Orders Law are not in any way harmful to the public.

The Benevolent Orders Law, of course, was enacted by the legislature. It states the benevolent orders that are subject to that law. From time to time, the legislature amended that law by adding to it other benevolent orders. It thus is demonstrated that the legislature is fully acquainted with the character and the purposes of the orders mentioned in the Benevolent Orders Law, because it is certainly a fair assumption, that in enacting that statute, and in addition to it by numerous amendments other orders, the legislature fully informed itself as to their purpose and character, and became convinced that they could in no manner be harmful to the public welfare.

These are the reasons why it is fair to presume that in exempting these benevolent orders and labor unions from the operation of this statute, the legislature fully informed itself as to their purposes, and became convinced that it was a proper classification to make.

Now we come to the real objects of this statute and the real purpose why the classification in question was made.

As we shall hereafter point out, if the legislature believed that there were evils to be corrected in the interests of the public welfare and morals, and if the legislature honestly believed that the enactment of the statute in question was a proper method of correcting those evils, then in the enactment of the statute the legislature was acting within the well established police power of the state, and relator's contention must fail.

In determining a question of this character, both the legislature and the Court may consider matters of common knowledge and even matters of common belief.

Matter of Viemeister, 179 N. Y. 235, 240.

We have already pointed out that there is nothing in the record to show the real purposes of the so-called Klan. It has been, however, for some time, a matter of common belief, discussed in the public press and elsewhere, that the Klan is a secret oath bound organization formed for the purpose of discriminating against Catholics, Jews and Negroes, and designed to deprive them of their rights of equality, and particularly to deprive them of their constitutional right to hold public office. Whether that is the real purpose of the Klan or not is immaterial. The legislature may well have believed that even though the charges against the Klan were not true, that there was the probability of the creation of organizations that might have for their purposes the unlawful objects to which we have referred, and that therefore, it was proper to enact the statute in question, to the end that by the publicity required public opinion would destroy such organizations, and in that way relieve the state and nation from the evils that must come from any organization that might be created to subvert the provisions of the Constitution of the State of

New York, and of the nation, by discriminating against citizens because of their race, their color or their creed.

Furthermore, it is a matter of common knowledge that where there is discrimination because of race, either by organized associations such as those referred to in this statute, or by the concerted action of individuals who have not formed themselves into a formal association, that great disorder and bloodshed have frequently occurred. The history of our country has been disgraced by numerous race riots, based upon racial discrimination, and which have frequently resulted not only in murder, but in a great many instances massacre.

From the beginning of the Christian religion, prejudices based upon religious difference, have throughout the world precipitated disorder and bloodshed. In the past, wars between great nations have been brought about because of religious controversies; and it ought not to need any extensive arguments to convince this Court, and it probably did not need any extensive argument to convince the legislature that enacted the statute in question, that if organizations are to be permitted that will attempt to subvert the provisions of the constitution that guarantee to all citizens complete liberty in their religious convictions and in their method of religious worship, and in their right to participate in all the privileges of American citizenship, including that of holding public office, without being discriminated against because of their religion, that it is probable that disorder and bloodshed would be caused by such organization.

The legislature presumably having these matters in mind, presumably recognizing the probability that organ-

izations of that character might be formed, even though none was already in existence, undoubtedly came to the honest conclusion that the public welfare and public safety, the public morals, the protection of the rights of all of our citizens, required that there should be some legislation to prevent the conditions to which we have referred; and it is to be presumed that honestly believing these things the legislature in good faith adopted the statute in question, as a proper method of preventing such evils.

If the legislature acted in that manner, and this Court should presume that it so acted, then under the authorities to which we have referred, the legislation in question is a valid classification that in no way offends the provisions of the State or Federal Constitution.

The legislature was justified in preventing any such evils as those to which we have referred, both real and fairly to be anticipated, by any legislation which reasonably tended to prevent them. It had a wide discretion in formulating the means to adopt to this end.

It was a sufficient basis in that respect for action if only there were reasonable grounds for belief that such evils were injurious, even though there was an earnest conflict of serious opinion on the subject.

People vs. Schweinler Press, 214 N. Y. 395, at page 406.

Again on the same page of the same case, the Court of Appeals states:

"If the statute upon its face appears to be reasonable and just and appropriate, and we can fairly believe that its natural consequences will be in the direc-

tion of betterment of public health and welfare, and therefore, that it is one which the state for its protection and advantage may enact and enforce, it will be the duty of the courts to pronounce it constitutional even though they should doubt its wisdom."

The reason why the operation of the statute is directed against organizations that require an oath as a prerequisite of membership is undoubtedly because the legislature had in mind various inimical oath bound organizations that have existed in this country, and throughout the world, and which have frequently been disastrous to the public welfare by attempts to overthrow the government, and by promoting disorder and bloodshed.

Many of the societies and organizations are enumerated in the prevailing opinion of the Appellate Division (R. 29).

Furthermore, the legislature may have had in mind that secret oath bound organizations might be formed for the purpose of overthrowing our own government; if it did so honestly believe then the legislature had a right to enact this kind of legislation for the purpose of securing the publicity that would enable the government to meet the activities of such an organization.

Native citizens are not required to take any oath of allegiance to the government; naturalized citizens are required to take an oath of that character. The legislature may well have believed that since the native citizens are not required to take such an oath, that when some of them bind themselves together in an oath bound organization, it might be important to know what the purposes of that organization are, to learn whether or not in taking such an oath those persons are obligating themselves to some

authority or power intended to be higher than the government itself; and, of course, it is equally important to know whether or not naturalized citizens, who have taken an oath to support the government, are taking any other kind of oath that might lead them, or cause them, or suggest to them a violation of the oath of fidelity to the Government which they have already taken.

In short, while it is claimed that the statute in question violates the equal rights provisions of the Constitution, as a matter of fact the very object of the statute is to protect those equal rights by preventing a denial to citizens of the equality in regard to race, color or creed guaranteed by the constitution.

This statute is not aimed at the Ku Klux Klan or any particular organization. It is aimed at any organization that may be harmful to the welfare of the state by destroying the constitutional rights of citizens, but it might have been brought about by the general belief that this is the purpose of the Ku Klux Klan.

The extent to which the Courts will sustain the legislature in a classification of the kind now under dispute is found in the case of People vs. Havnor, 149 N. Y. 195, in which the Court of Appeals upheld the constitutionality of a statute which made it a misdemeanor for any one to engage in the business of barbering on Sunday except in the City of New York, and Village of Saratoga Springs.

In that case the Court of Appeals said that there is no constitutional provision against class legislation as such, if the classification is based upon some reasonable ground and is not essentially arbitrary. Certainly, if the classi-

fication in the Havnor case is reasonable and is not essentially arbitrary, then the legislature, in adopting the statute in question, acted well within its constitutional rights in regard to the police powers of the state. See People vs. Schweinler Press, 214 N. Y. 395.

SECOND: Restricting the statute to unincorporated associations of twenty or more members is a reasonable classification and not essentially arbitrary, and is therefore constitutional.

In limiting the application of the statute to associations of twenty or more members, the legislature evidently had in mind that a large organization of this character might be harmful, whereas, a smaller one might not be subject to the same criticism.

In formulating legislation of this character, in order to reach the evils aimed at, the legislature must start somewhere, and its discretion as to where it should start should not be interfered with by the Courts. As time goes on, it may develop that secret oath bound organization of less than twenty members are harmful to the public welfare, in which event the legislature could direct its action against a smaller organization, or it might develop by experience that an oath bound organization of 20 members does not contain some of the evils that a larger organization might have, and then the legislature in the exercise of its wisdom and discretion might amend the law to make it apply to organizations of larger number. It was, however, necessary in enacting new legislation of this character for the legislature to commence at some particular point, and this Court should presume that in limiting the statute to associations of twenty or more members that the legislature acted in good faith, and after an investigation of the sub

ject which lead it to believe that limiting the effect of the statute to a certain number of persons is a proper classification, and would tend to correct the evils that the legislature was seeking to correct.

This rule of law is clearly stated in the case of Miller vs. Wilson, 236 U. S. 373:

> "It is a well-established principle that the legislature is not bound, in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. Patsone vs. Pennsylvania, 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' Carroll vs. Greenwich Insurance Co., 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied."

The Miller case just referred to is quoted with approval in the recent case of Radice vs. New York, 264 U. S. 292.

The case distinctly in point as justifying the right of the legislature to limit the application of this statute to organizations of twenty or more members is that of People vs. Klinck Packing Company, 214 N. Y. 121.

In that case the statute under consideration provided that every employer carrying on any factory or mercantile establishment shall allow every person employed in such factory or mercantile establishment at least twenty-four consecutive hours of rest in every seven consecutive days. There were various exemptions in the operation of that statute, one was that of employees of dairies, etc, numbering seven or less. The Court of Appeals held that limiting the operation of the statute to employees of seven or less was not an unreasonable classification under the circumstances of that particular case.

We respectfully contend that, under the circumstances in this case, limiting the operation of the statute to associations of twenty or more is not unreasonable, but was well within the discretion of the legislature which, presumably, made the statute apply to that particular number, because its investigation of the subject lead it to believe that the classification was proper.

Relator cites the case of Cotting vs. Kansas, etc., 183 U. S. 79, as sustaining a contrary doctrine. This case is not applicable to the proposition under dispute.

In People vs. Klinck Packing Co. *(supra)*, the New York Court of Appeals said, referring to the reasoning in the Cotting case:

> "We do not think that this classification is at all subject to the condemnation which was visited upon the statute pertaining to stock yards in Cotting vs. Kansas City S. Y. Co., 183 U. S. 79. There the statute was manifestly aimed at one particular corporation and the attempt was made to base the classification upon mere extent of business, and between the class

fication and such feature there was no legitimate connection whatever."

People vs. Klinck Packing Co., 214 N. Y. 121, at pages 137 and 138.

Relator cites very many cases, none of which are applicable to the propositions under dispute here except that they establish certain rules in regard to the police power of the state, which are not in controversy. For that reason we do not discuss those cases, and an examination of relator's brief will readily suggest to this court the reason why we do not discuss them.

POINT III.

The dissenting opinion in the Appellate Division (R. 31) is based upon a misapprehension of the facts involved in this controversy.

We have great respect for the reasoning and logic of the learned Justice who wrote this dissenting opinion. Because of the ability of the dissenting opinion we feel that we should attempt to show to this court that the reasoning upon which it is based is fallacious.

Mr. Justice Davis seems to think that the legislation in question is oppressive and confiscatory. An examination of the statute, however, shows that it is not at all confiscatory and that it is far from oppressive. The penalties imposed are the usual penalties for misdemeanors. Under the statute no one is deprived of any property right whatever. The fact that the statute requires certain societies and organizations to file with the Secretary of State their oaths, constitutions, etc., does not even take away from

these societies the secrecy of their institutions, because Mr. Justice Davis asserts in his opinion, "However, there is scarcely a society today whose secrets have not been revealed and published by unworthy or apostate members." (R. 33.) And it is asserted in the brief filed by counsel for relator, "The oath of the Knights of the Ku Klux Klan, as we have said, has become generally known throughout the country." Thus, both the learned Justice who wrote the dissenting opinion below, and counsel for the relator, agree that the so-called secret societies of the country have no secrets that have not been disclosed to the public. Their claim, therefore, that compelling such organizations to file this data with the Secretary of State is oppressive, falls from the weight of their own admissions. Consequently there is no force in Mr. Justice Davis' contention, "that the constitution, by-laws, roster and oath of a secret society are its property." He admits that the secrets of such organizations have been made public, and it is a matter of common notoriety that most secret organizations of that character publish and distribute, almost indiscriminately, copies of their roster, their constitution and their by-laws.

"The right of a man to attend a meeting is a personal right. The power to confiscate the one and infringe upon the other with the penalty of imprisonment, must find its authority in some great and compelling necessity involving public safety and welfare." (Dissenting opinion. R. 36.)

In that sentence is to be found the fallacy of the dissenting opinion below. Apparently the learned Judge who wrote that opinion did not sense the evils that can come, and usually do come, from societies or organizations created to promote prejudice based upon religion, race, or color, and to deprive citizens of their political rights, in

cluding that of holding public office, because of prejudices of that character. To some extent, we have already discussed that question under Point II. of our brief. In view of the dissenting opinion, however, we feel that we should go further into the evils that can come from the conditions to which we have referred. It is a matter of common knowledge that during recent years religious and racial controversies have been injected into the polities of this country, and to such an extent has this propaganda advanced, and so great are the evils to be expected from it, that at a recent convention of the American Bar Association so distinguished and respected a public man as the Hon. Charles E. Hughes, then President of the American Bar Association, devoted a large part of his eloquent and able annual address to an earnest plea to all our American citizens to eliminate from American life prejudices based upon race or religion.

It is a matter of common knowledge that within recent years prejudices of that character have invaded the great political parties of this country, and have even entered its national conventions, and when considerations of that kind enter into our political life the citizens lose interest in the real political questions of the day and are disposed to be controlled in political matters by these prejudices rather than the principles promulgated by the political parties, and the character of the candidates advanced by these parties for public office.

Ours is a cosmopolitan country. Its citizenship is composed of people of all creeds, colors and races. When they are arraigned against each other because of prejudices of the character which have already been referred to, we can expect only discord and unhappiness in the country, and in that way our American institutions will be impaired.

When citizens are discriminated against because of race, color or creed, and for those reasons are deprived of their constitutional rights; when because of religious zeal or political opportunism, the voters of the nation, state, or even of municipalities, are led to forget the principles of our great political parties, and to overlook the personalities and characters of candidates for public office and to cast their votes not for the benefit of the government, but because of religious or racial prejudices, then, indeed, only the most narrow visioned can fail to see a present and tremendous menace to our institutions.

Such conditions, therefore, present a real danger to the welfare of the country, and such conditions, therefore, not only permit, but demand regulation and restraint; and if the mild provisions of the statute in question do not remedy these conditions, then more drastic relief through legislation is not only justified, but urgently demanded. It is for these reasons that we so seriously contend that legislation designed to protect the fundamental rights of all our citizens cannot be in violation of the constitution.

POINT IV.

We, therefore, submit Sections 53 and 56 of Article 5-A of the Civil Rights Law, being portions of Chapter 664, Laws of 1923 of the State of New York known as the Walker Law, are constitutional and do not contravene Section 1 of the 14th Amendment to the Constitution of the United States of America in any particular and that the orders of the Courts of the State of New York herein appealed from, should be affirmed and said Writ of Habeas Corpus dismissed.

All of which is respectfully submitted.

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